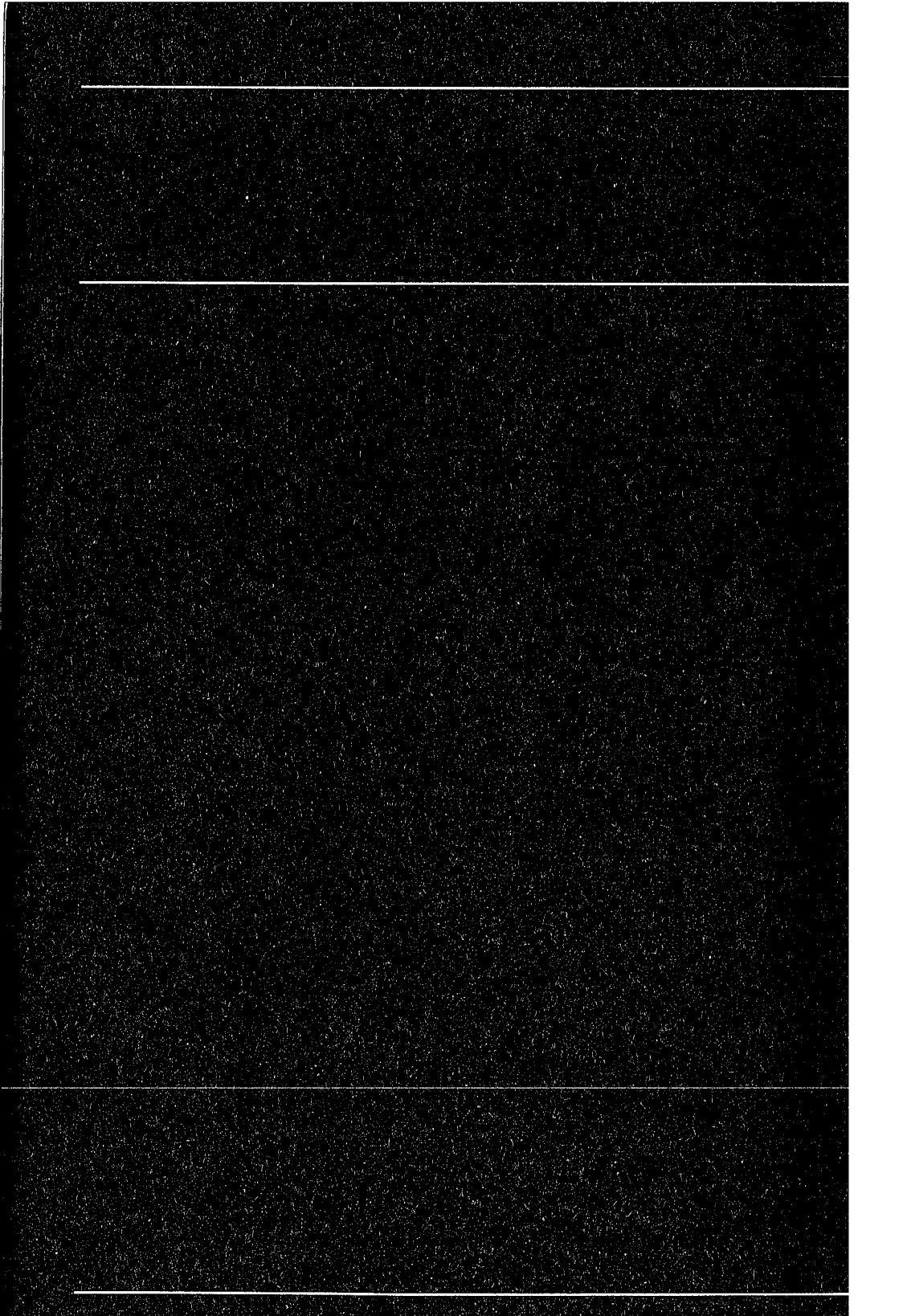


GAO

Office of General Counsel

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Digests of Decisions of the Comptroller General of the United States



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Preface

This publication is one in a series of monthly pamphlets entitled "Digests of Decisions of the Comptroller General of the United States" which have been published since the establishment of the General Accounting Office by the Budget and Accounting Act of 1921. A disbursing or certifying officer or the head of an agency may request a decision from the Comptroller General pursuant to 31 U.S.C. § 3529 (formerly 31 U.S.C. §§ 74 and 82d). Decisions concerning claims are issued in accordance with 31 U.S.C. § 3702 (formerly 31 U.S.C. § 71). Decisions on the validity of contract awards are rendered pursuant to the Competition In Contracting Act, Pub. L. No. 98-369, July 18, 1984. Decisions in this pamphlet are presented in digest form. When requesting individual copies of these decisions, which are available in full text, cite them by file number and date, e.g., B-257405, Sept. 30, 1994. Approximately 10 percent of GAO's decisions are published in full text as the Decisions of the Comptroller General of the United States. Copies of these decisions are available in individual copies and in annual volumes. Decisions in these volumes should be cited by volume, page number, and year issued, e.g., 72 Comp. Gen. 347 (1993).

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January 1995

Appropriations/Financial Management

B-256765, January 19, 1995

Appropriations/Financial Management

Obligation

■ **No-year appropriation**

In November 1991 the Bureau of Indian Affairs reported on its year-end closing statement (FMS Form 2108) a withdrawal of \$1,956,498.64 from its no-year account "Bureau of Indian Affairs, Operations Indian Programs" (Account No. 14X2100). Although the prior law applicable to the closing of no-year accounts, 31 U.S.C. § 1555 (1988), permitted the withdrawal and restoration of budget authority, the law as amended in November 1990 and as applicable here no longer so permits. Pub. L. No. 101-510, 104 Stat. 1678, November 5, 1990.

Appropriations/Financial Management

Obligation

■ **No-year appropriation**

The amended account closing provisions applicable to no-year accounts permit account closing and the cancellation of budget authority therein under certain limited conditions. Since these conditions are not satisfied here, and since the Bureau at the time of its action lacked the authority to withdraw the funds in question, the withdrawal was without effect. Accordingly, the Department of the Treasury should adjust the account balance upward by \$1,956,498.64.

Civilian Personnel

B-258327, January 3, 1995

Civilian Personnel

Compensation

- Overpayment
- ■ Error detection
- ■ ■ Debt collection
- ■ ■ ■ Waiver

Civilian Personnel

Compensation

- Payroll deductions
- ■ Life insurance
- ■ ■ Insurance premiums
- ■ ■ ■ Underdeductions

When an employee was reemployed at a different Air Force Base than the one before, the Air Force erroneously stopped deducting life insurance premiums from her salary, which resulted in overpayments and indebtedness. Even though the Air Force was at fault in not continuing the deductions and in not following an internal regulation which would have resulted in earlier detection of the error, the employee was partially at fault in not reviewing her leave and earnings statements that showed that the deductions were not being made. Since the employee was partially at fault, her indebtedness may not be waived.

B-235609.2, January 9, 1995

Civilian Personnel

Compensation

- Overtime
- ■ Standby overtime
- ■ ■ Eligibility

Department of Health and Human Services appeals determinations of the Director, Office of Personnel Management (OPM), that three of its employees are entitled to standby pay under the Fair Labor Standards Act (FLSA) for various periods from 1980 to 1985. As set forth in *Lee R. McClure*, 63 Comp. Gen. 546 (1984), GAO accords great weight to OPM determinations on FLSA claims and will not overrule those determinations unless they are clearly erroneous or contrary to law or regulation. Upon review of the three claims, GAO concludes that there is no basis to overturn the factual findings and the legal determinations of the OPM Director.

Civilian Personnel

Compensation

■ Overtime

■ ■ Standby overtime

■ ■ ■ Eligibility

■ ■ ■ ■ Statutes of limitation

Two employees of the Sells, Arizona, Indian Hospital claim compensation for standby duty under Fair Labor Standards Act (FLSA). For periods before May 22, 1983, their claims are barred by expiration of the 6-year statute of limitations. For those periods on or after that date when the employees were on the Hospital compound, the OPM Director denied their claims because they were not to engage in most of their normal off-duty activities during the waiting periods, so that their home activities were not substantially limited. OPM's denials are affirmed under 5 C.F.R. § 551.431(a) (1993), which requires that, in order for standby duty to be compensable under the FLSA, an employee cannot use the time effectively for his or her own purposes. See *Lee R. McClure*, 63 Comp. Gen. 546 (1984).

Civilian Personnel

Compensation

■ Overtime

■ ■ Standby overtime

■ ■ ■ Eligibility

■ ■ ■ ■ Statutes of limitation

Employee of the Schurz, Nevada, Indian Hospital appeals OPM's partial denial of his claim for compensation for standby duty under the Fair Labor Standards Act. For the period before March 17, 1980, the claim is time-barred. For the period from March 17, 1980, to December 31, 1984, the OPM Director determined that the employee qualified for stand-by pay because his activities were substantially limited. However, for the period from January 1, 1985, to June 6, 1985, the OPM Director determined that his normal off-duty activities at his home which was then on the Hospital compound were not substantially limited during waiting periods. Thus, the employee did not meet the standard in 5 C.F.R. § 551.431(a)(1) (1993). OPM's denial is affirmed based on the record. See *Lee R. McClure*, 63 Comp. Gen. 546 (1984).

B-257670, January 10, 1995

Civilian Personnel

Travel

- **Lodging**
- ■ **Expenses**
- ■ ■ **Reimbursement**
- ■ ■ ■ **Mobile homes**

Civilian Personnel

Travel

- **Temporary duty**
- ■ **Per diem**
- ■ ■ **Eligibility**

An employee on temporary duty used a recreational vehicle (RV) for lodging when extreme weather conditions forced him to leave the RV and relocate in a motel. The employee may be allowed full per diem allowance at the motel and reimbursed the actual expenses for the RV during this period, provided the agency determines that he acted reasonably and was unable to occupy the RV because of conditions beyond his control.

B-257916, January 10, 1995

Civilian Personnel

Relocation

- **Expenses**
- ■ **Eligibility**
- ■ ■ **Dependents**

Entitlement to relocation expenses for 21-year-old daughter of federal employee depends on whether the daughter is considered a member of the employee's immediate family, under the Federal Travel Regulation, 41 C.F.R. § 302-1.4(f)(ii) (1994). Since the daughter did not fulfill either one of the two conditions set forth in that provision, namely (1) persons who are unmarried and under 21, or (2) who, regardless of age, are physically or mentally incapable of self-support, we deny the employee's claim for the relocation expenses of her daughter.

B-257914, January 12, 1995

Civilian Personnel

Relocation

- **Temporary quarters**
- ■ **Actual subsistence expenses**
- ■ ■ **Dependents**
- ■ ■ ■ **Eligibility**

An employee questions whether his family is entitled to temporary quarters subsistence expenses (TQSE) incident to their early return from the employee's overseas post of duty. The applicable statute limits reimbursement in these circumstances to the travel of the immediate family and the transportation of the employees household goods. 5 U.S.C. § 5729 (1988). *See also* FTR § 302-1.12; and 58 Comp. Gen. 606 (1979).

B-257489, January 13, 1995

Civilian Personnel

Travel

- Temporary duty
- ■ Per diem rates
- ■ ■ Amount determination

Civilian Personnel

Travel

- Travel orders
- ■ Retroactive adjustments

Travel orders providing a special reduced per diem rate for two employees assigned to long-term temporary duty were proper when issued, and the fact that a subsequent change in federal tax enacted after the assignments began and of which the employees and agency officials were unaware effectively reduced the value of the per diem did not render the rate set in the orders erroneous. While the agency states that had it been aware of the effect of the tax change, it would have increased the per diem rate prospectively, setting such a rate was within the agency's discretion, considering various factors, and the fact that it did not prospectively amend the orders to increase the per diem rate does not constitute administrative error since there was no administrative policy or regulatory effect at the time requiring agency officials to do so. *Paul Manaker*, B-134853, Feb. 26, 1994. Accordingly, the employees travel orders may not be amended retroactively to increase the per diem rates.

B-256982.2, January 17, 1995

Civilian Personnel

Travel

- Lodging
- ■ Reimbursement
- ■ ■ Government quarters
- ■ ■ ■ Availability

Section 1589 of title 10, United States Code, prohibits use of Department of Defense funds to pay lodging expenses of DOD employees traveling on official business when adequate government quarters are available for the employees. This section does not bar reimbursement to an employee who stays in non-government quarters while government contract quarters were available if the stay in non-government quarters results in no added expense to the agency. Previous decision, B-256982, Jan. 10, 1994, 73 Comp. Gen. 187, which denied the employee's claim is reversed based on new information showing that the agency incurred no expense for the unoccupied contract quarters.

B-258308, January 18, 1995**Civilian Personnel****Relocation**

- Residence transaction expenses
- ■ Mortgage insurance
- ■ ■ Reimbursement

An FHA mortgage insurance premium, described on the real estate settlement statement as a "Mortgage Insurance application fee to U.S. Dept. of HUD," which the record shows was a mortgage insurance premium, may not be reimbursed in connection with an employee's purchase of a house incident to his relocation because the Federal Travel Regulation, 41 C.F.R. § 302-6.2(d)(2), specifically prohibits reimbursement of this type of fee.

B-255936, January 25, 1995**Civilian Personnel****Travel**

- Temporary duty
- ■ Travel expenses
- ■ ■ Reimbursement
- ■ ■ ■ Amount determination

An employee on extended temporary duty away from her permanent duty station was authorized to use a privately owned vehicle at her temporary duty station. She returned by common carrier to her permanent station for official business, rented a vehicle at the airport near her permanent station, and retained the vehicle while there for commuting and other personal uses. Under 41 C.F.R. § 301-2.3(c)(1) and previous decisions, the cost of vehicle rental may be allowed, but only to the extent of the cost of her travel to and from the carrier terminal not to exceed the usual taxicab or limousine cost for the same travel. Since the employee did not perform official business at her permanent station which required the use of a vehicle, the rental cost for purposes other than travel to and from the carrier terminal may not be allowed.

B-257886, January 25, 1995**Civilian Personnel****Compensation**

- Overpayments
- ■ Error detection
- ■ ■ Debt collection
- ■ ■ ■ Waiver

A reemployed annuitant's pay upon entry on duty was substantially reduced as a result of his receipt of a retirement annuity. However, since he was not counseled to furnish his payroll office notices of annual cost-of-living increases to his annuity, which should have resulted in increased reductions from his salary, he received salary overpayments over a 10-year period. He states that he assumed current information as to the amount of his annuity was being furnished to his agency by the Office of Personnel Management and was not aware he was being overpaid. He is found not to be at fault, and the amount of his debt that accumulated before he received notice of the overpayments is waived,

since based upon the instructions and documents he received, the payroll errors were not rea apparent.

B-257892, January 25, 1995**Civilian Personnel****Relocation**

- Residence transaction expenses
- ■ Mortgage insurance
- ■ ■ Reimbursement

A transferred employee claims reimbursement for a mortgage insurance application fee and a mortg insurance fee because they were required by the lender. The claim is denied. The Federal Tra Regulation, 41 C.F.R. § 302-6.2(d)(2)(i) (1992), specifically prohibits reimbursement of this type charge.

B-258268, January 25, 1995**Civilian Personnel****Relocation**

- Residence transaction expenses
- ■ Reimbursement
- ■ ■ Eligibility
- ■ ■ ■ Residency

An employee, upon separating from his spouse, voluntarily left the family home and moved into nearby apartment before being notified of his transfer of official duty station. He may not reimbursed selling expenses for the family residence because, for purposes of relocation allowanc an employee's residence is the place from which the employee regularly commutes to and from wo and in this case, that place was the employee's apartment.

Military Personnel

B-257083, January 9, 1995

Military Personnel

Pay

- Basic quarters allowances
- ■ Eligibility

Where member incurs no housing expense at permanent duty station even though the member is not assigned government quarters, the member is still entitled to receive a Basic Allowance for Quarters under 37 U.S.C. § 403 since there is no requirement either in the statute or the implementing regulations that costs must be incurred to receive the allowance.

B-257862, January 17, 1995

Military Personnel

Pay

- Overpayments
- ■ Error detection
- ■ ■ Debt collection
- ■ ■ ■ Waiver

A retired Navy member's request for waiver of a debt to the United States under 10 U.S.C. § 2774 is denied. The debt arose when an extra paycheck was issued to him after his retirement and deposited in his bank account. Because the member should have been aware of the overpayment, and should have called it to the attention of the Navy, he is not without fault, and waiver is therefore precluded.

B-257717, January 25, 1995

Military Personnel

Pay

- Dual compensation restrictions
- ■ Retired personnel

Retired member employed by Coast Guard Exchange Service, a nonappropriated fund instrumentality under the jurisdiction of the armed forces, holds a "position" under 5 U.S.C. § 5531 and is subject to the dual compensation restrictions of 5 U.S.C. § 5532 notwithstanding the definition of "civil service" in 5 U.S.C. § 2101(1).

B-259696, January 25, 1995
Military Personnel

Pay

- Overpayment
- Reenlistment bonuses
- Debt collection
- Waiver

A former Air Force member received a Selective Reenlistment Bonus (SRB), but was discharged before the end of his term of enlistment. The unearned portion of his SRB may not be considered for waiver under 10 U.S.C. § 2774 because the SRB payment was proper when made and does not constitute erroneous payment.

Procurement

B-258281, January 5, 1995

95-1 CPD ¶ 1

Procurement

Special Procurement Methods/Categories

■ Architect/engineering services

■■ Offers

■■■ Evaluation criteria

■■■■ Application

Protest against evaluation of proposal for architect-engineering services is denied where record establishes that agency had a reasonable basis for ranking the protester third and the evaluation was otherwise consistent with the published evaluation criteria.

B-258976.2, January 5, 1995

Procurement

Bid Protests

■ GAO authority

Procurement

Bid Protests

■ GAO procedures

■■ GAO decisions

■■■ Reconsideration

Challenge to a firm's status as a small business on the basis of its publicly held status was properly held to be a matter for the Small Business Administration, which is responsible for taking into account all small business criteria, including whether the firm is independently owned and operated, in determining a firm's small business status.

B-258293, B-258293.2, January 6, 1995

95-1 CPD ¶ 8

Procurement

Competitive Negotiation

■ Offers

■■ Evaluation

■■■ Technical acceptability

Where an agency rejects a proposal from a small business as technically unacceptable on the basis of factors not related to responsibility, as well as responsibility-related ones, the agency is not required to refer the matter to the Small Business Administration under its certificate of competency procedures.

B-258305, January 6, 1995

95-1 CPD ¶

Procurement

Competitive Negotiation

- Offers
- ■ Submission time periods
- ■ ■ Extension
- ■ ■ ■ Propriety

The refusal of a Department of Energy management and operating contractor to extend a proposal date on a request for proposals, whereunder three proposals were received, to accommodate request by a prospective offeror shortly before the closing date for receipt of proposals does violate the federal norm as embodied in applicable Department of Energy regulations.

B-258321, January 6, 1995

95-1 CPD ¶

Procurement

Special Procurement Methods/Categories

- Communication systems/services
- ■ Evaluation
- ■ ■ Technical acceptability

Protest that agency is required to consider offeror's alleged cost savings concerning the government long-distance network with respect to a procurement for local telecommunications services is denied where the solicitation does not require the contracting agency to consider such costs, and where costs at issue are not directly related to the acquisition.

B-256498.2, January 9, 1995

95-1 CPD ¶

Procurement

Competitive Negotiation

- Offers
- ■ Competitive ranges
- ■ ■ Exclusion
- ■ ■ ■ Administrative discretion

Agency reasonably excluded protester's initial proposal from competitive range where the proposal contained numerous deficiencies—many of which, standing alone, would have been adequate to eliminate proposal from further consideration—and correction of the deficiencies would require submission of virtually a new proposal.

B-258330, January 9, 1995

95-1 CPD ¶ 12

Procurement

Specifications

- Minimum needs standards
- ■ Competitive restrictions
- ■ ■ Design specifications
- ■ ■ ■ Justification

The Forest Service properly may require timber purchasers to reconstruct forest development roads to a higher standard than that needed in the harvesting and removal of timber in a particular sale where the higher standard reasonably reflects the agency's needs.

Procurement

Government Property Sales

- Timber sales

Because, in accordance with 16 U.S.C. § 472a (1988), the Forest Service must ensure that timber is sold at not less than its appraised value, the agency reasonably limited the amount of road reconstruction credit available to timber purchasers to the appropriate estimated costs of reconstructing those roads necessary to haul timber to the designated marketing point used to appraise the value of the timber.

B-258331, January 9, 1995

95-1 CPD ¶ 13

Procurement

Socio-Economic Policies

- Small businesses
- ■ Responsibility
- ■ ■ Negative determination
- ■ ■ ■ GAO review

Protest that section 8(a) firm was improperly found to be nonresponsive is denied where there is no evidence of a violation of regulations or fraud or bad faith by government officials.

B-258366, January 9, 1995

95-1 CPD ¶ 14

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Contractors
- ■ ■ ■ Identification

Bid submitted in abbreviated corporate name was properly determined to be responsive where the company was registered to do business under its abbreviated and full corporate names.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Amendments
- ■ ■ Acknowledgment
- ■ ■ ■ Waiver

Contracting officer properly waived bidder's failure to acknowledge receipt of two solicitation amendments which either restated information already in the solicitation or provided certain updated standard provisions which were not inconsistent with the initial solicitation language, and did not impose additional legal obligations on the bidders or impact price.

B-258347, January 11, 1995

95-1 CPD ¶

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability
- ■ ■ ■ Tests

Protest alleging "on information and belief" that the protester's proposed product is superior to the awardee's and is the only proposed product that can meet the solicitation's testing requirements denied where the allegations are unsubstantiated and provide no basis for finding unreasonable the agency's determination that the protester's and the awardee's proposed products are similar in nature and that both met the testing requirements.

Procurement

Bid Protests

- Allegation substantiation
- ■ Lacking
- ■ ■ GAO review

Protest alleging that the agency improperly evaluated the technical and management areas of the protester's proposal is denied where the evaluation was reasonable and consistent with the stated evaluation criteria; the protester's mere disagreement with the evaluation provides no basis to find the evaluation unreasonable.

Procurement

Competitive Negotiation

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Technical superiority

Contracting agency reasonably decided to award a cost-type contract to the offeror of the highest rated, highest-cost proposal where: (1) awardee's proposal received the highest technical and management evaluation ratings; (2) the solicitation stated that technical and management evaluation areas were more important than cost; and (3) the agency's cost realism analysis showed that the most probable cost of all three proposals were within a very close range.

B-258367, January 11, 1995

95-1 CPD ¶ 137

Procurement

Small Purchase Method

- Contract awards
- ■ Propriety

Procurement

Small Purchase Method

- Requests for quotations
- ■ Competition rights
- ■ ■ Contractors
- ■ ■ ■ Exclusion

Protest against the issuance of a purchase order under small purchase procedures is sustained where agency did not publicly display notice of the procurement or solicit quotations from a reasonable number of sources as required by applicable regulations.

B-259648, January 12, 1995

95-1 CPD ¶ 16

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ 10-day rule

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ Apparent solicitation improprieties

Procurement

Competitive Negotiation

- Competitive advantage
- ■ Organizational conflicts of interest
- ■ ■ Allegation substantiation
- ■ ■ ■ Lacking

Protest contention alleging organizational conflict of interest on the part of the awardee is dismissed as untimely where the solicitation identified three companies that assisted the agency in developing the project, advised that the solicitation had been reviewed and approved pursuant to the organizational conflict provisions set forth in the Federal Acquisition Regulation, and provided potential offerors with copies of the background papers prepared for the agency; and where the record clearly shows that the protester was aware of the awardee's participation throughout the procurement.

B-258374, January 13, 1995

95-1 CPD ¶

Procurement

Specifications

- Minimum needs standards
- ■ Competitive restrictions
- ■ ■ GAO review

Protest that solicitation for a computerized electronic reservation and ticketing system is unduly restrictive of competition is sustained where agency has not provided a showing that a requirement that offerors have a universal bilateral ticket stock agreement, which is available only to airlines necessary to meet the agency's minimum needs.

B-258407, January 13, 1995

95-1 CPD ¶

Procurement

Competitive Negotiation

- Offers
- ■ Prices
- ■ ■ Evaluation
- ■ ■ ■ Technical acceptability

A solicitation's general reference to Federal Acquisition Regulation (FAR) § 52.215-16, which states that award will be made to the offeror whose proposal is most advantageous to the government, cost, price and other factors specified elsewhere in the solicitation considered, does not conflict with technical evaluation factors provided in section M of the solicitation where that section expressly states that award will be made to the offeror who offers the lowest-priced, technically acceptable proposal. The FAR provision refers to factors specified elsewhere in the solicitation; section M of the solicitation expressly sets forth the evaluation factors and basis for award.

Procurement

Competitive Negotiation

- Offers
- ■ Submission time periods
- ■ ■ Adequacy

Protest that amended closing date for the receipt of proposals did not permit sufficient time for firm to submit proposals is denied where the agency permitted more than the statutorily required 30 days for offers were timely submitted without objection to the closing date by other offerors, and there is evidence that the agency deliberately attempted to exclude the protester from the procurement.

B-258546, January 13, 1995

95-1 CPD ¶

Procurement

Noncompetitive Negotiation

- Contract awards
- ■ Sole sources
- ■ ■ Propriety

Agency properly awarded a sole-source contract to the only source capable of providing a component of the main landing gear wheel and brake assembly of the F-15 aircraft, where that source owns the

engineering data for the assembly and all its components, without which the agency could not evaluate the acceptability of the protester's proposal to develop and manufacture its own component.

B-255711.2, January 17, 1995

95-1 CPD ¶ 24

Procurement

Competitive Negotiation

- Offers
- ■ Risks
- ■ ■ Pricing

Agency's determination that proposal risk rating should be "low" notwithstanding prior instance of defective pricing by offeror is reasonable given the circumstances of the defective pricing and the numerous strengths identified in the offeror's proposal.

B-257516, January 17, 1995

Procurement

Payment/Discharge

- Carriers
- ■ Refunds
- ■ ■ Doubtful claims
- ■ ■ ■ Courts

A carrier's claim for refund of a set off against it for transit damages is doubtful when the claim is based on a rider to an inventory which takes exception to the condition of, or tender of, an inventory item at a nontemporary storage warehouse and the signature of the warehouseman's agent is not authenticated by the warehouse or by other evidence. When the record before us contains such a dispute of fact which cannot be resolved without an adversary proceeding, it is our long-standing practice to disallow the claim and leave the claimant to pursue his remedy in court.

B-258426, January 17, 1995

95-1 CPD ¶ 22

Procurement

Sealed Bidding

- Low bids
- ■ Error correction
- ■ ■ Price adjustments
- ■ ■ ■ Propriety

Agency properly allowed awardee to correct a mistake in bid where the agency reasonably concluded that the awardee presented clear and convincing evidence of the existence of a mistake and the intended bid, and the bid is low with or without correction.

B-258544, January 17, 1995

95-1 CPD ¶ 2

Procurement

Competitive Negotiation

- Contract awards
- ■ Propriety
- ■ ■ Brand name/equal specifications
- ■ ■ ■ Equivalent products

Protest challenging the acceptability of the awardee's "equal" product in a brand name or equal procurement is denied where the procuring agency reasonably determined that the product met all the solicitation's technical requirements as set forth in the stated salient characteristics of the brand name.

B-258578, January 17, 1995

95-1 CPD ¶ 1

Procurement

Sealed Bidding

- Bid guarantees
- ■ Responsiveness
- ■ ■ Liability restrictions

Protest that bid bond in an amount less than the required 20 percent of the total aggregate bid price rendered low bid nonresponsive is denied; since amount of the bid bond was greater than the difference between the low bid and the next low bid, discrepancy was waivable pursuant to Federal Acquisition Regulation § 28.101-4(c)(2).

B-255528.6, *et al.*, January 18, 1995

95-1 CPD ¶ 2

Procurement

Competitive Negotiation

- Offers
- ■ Organizational experience
- ■ ■ Evaluation
- ■ ■ ■ Evidence sufficiency

Evaluation of awardee's corporate experience as acceptable was unobjectionable where, even protester is correct that 8 of 28 listed contracts were performed by an entity which recently had been sold by the awardee, there was nothing on the face of the proposal which would lead agency to question the accuracy of the proposal information, and there is no reason to believe that the awardee's experience rating would have been other than acceptable based on the other 20 listed contracts.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Price negotiation

Where protester's cost, although relatively high, was determined to be reasonable given the technical approach the firm was proposing, agency was not required to conduct discussions with the firm aimed at lowering its cost.

Procurement**Sealed Bidding**

- Invitations for bids
- ■ Cancellation
- ■ ■ Justification

Cancellation of solicitation is unobjectionable where the record supports the agency's determination that its needs have changed, so that the solicited services are no longer needed.

Procurement**Bid Protests**

- GAO procedures
- ■ Preparation costs

Protester is not entitled to recover its bid preparation costs where it was in line for award but the solicitation was canceled before award was made, and the determination to cancel was unobjectionable.

Procurement**Bid Protests**

- Moot allegation
- ■ GAO review

Initial proposed awardee's request for reconsideration is dismissed as academic where agency cancels solicitation.

B-258126.2, January 18, 1995**Procurement****Sealed Bidding**

- Bids
- ■ Errors
- ■ ■ Error substantiation

Procurement**Sealed Bidding**

- Low bids
- ■ Rejection
- ■ ■ Propriety

An apparently mistaken bid was properly rejected where the bid was significantly lower than the government estimate and the bidder failed to provide the agency with a requested explanation that would support its asserted claim that the bid was correct as submitted.

B-258400, January 18, 1995

95-1 CPD ¶ 1

Procurement

Competitive Negotiation

- Offers
- ■ Competitive ranges
- ■ ■ Exclusion
- ■ ■ ■ Administrative discretion

Protest that agency improperly eliminated proposal from competitive range is denied where record shows that agency reasonably concluded, because of large field of superior competing proposals, that protester's proposal had no reasonable chance of award.

B-258429, B-258429.2, January 19, 1995

95-1 CPD ¶ 2

Procurement

Sealed Bidding

- Unbalanced bids
- ■ Allegation substantiation
- ■ ■ Evidence sufficiency

A bid for a uniform level of service over one base year and three option years is not unbalanced merely because the bid price for the final option year is understated where the record shows that the bid's prices for the base and first two option years, which were less than the government estimate and roughly the same as the other bids, were not significantly overstated.

B-258441, January 19, 1995

95-1 CPD ¶ 2

Procurement

Contractor Qualification

- Organizational conflicts of interest
- ■ Determination

Where offerors are required to submit an acceptable organizational conflict of interest (COI) plan in order to be considered for award, evaluators reasonably determined that award selectee's COI plan was acceptable notwithstanding their identification of four correctable deficiencies in that plan.

Procurement

Competitive Negotiation

- Contract awards
- ■ Source selection boards
- ■ ■ Administrative discretion

Source selection official's (SSO) decision to raise award selectee's score for one technical factor unobjectionable since SSO is not bound by the recommendations and conclusions of evaluators and as a general rule, we will defer to such an official's judgment even when she disagrees with assessments made by working level evaluators.

Procurement

Competitive Negotiation

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Technical superiority

Procurement

Competitive Negotiation

- Contract awards
- ■ Award procedures
- ■ ■ Procedural defects

Where mission suitability and cost factors are equal, and relevant experience/past performance is considered somewhat less important, record supports source selection official's determination that award selectee's technical superiority and better experience outweighs protester's lower evaluated cost.

B-258474, January 19, 1995

Procurement

Sealed Bidding

- Bids
- ■ Late submission
- ■ ■ Rejection
- ■ ■ ■ Propriety

Bid sent by United States Postal Service Express Mail only 1 business day before bid opening was properly rejected as late since bid was received in bid opening room after bid opening and could not be considered for award under the late bid rules; bidder did not allow reasonable time to ensure timely receipt of bid at bid opening location.

B-257054.2, January 20, 1995***

95-1 CPD ¶ 29

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Evaluation criteria
- ■ ■ ■ Application

Protest that agency improperly evaluated protester's proposal is denied where the record shows that the agency evaluated the protester's proposal in accordance with the evaluation criteria set forth in the solicitation and supports the reasonableness of the agency's overall technical rating of the protester's proposal as "marginal."

Procurement

Competitive Negotiation

- Contract awards
- ■ Initial-offer awards
- ■ ■ Discussion
- ■ ■ ■ Propriety

Procurement

Competitive Negotiation

- Discussion
- ■ Determination criteria

Where solicitation announced that the Department of the Navy intended to evaluate proposals and make award on the basis of initial proposals without conducting discussions, and agency's evaluation of the protester's proposal as "marginal" overall was reasonable and in accordance with the solicitation's evaluation criteria, the agency was not required to conduct discussions with the protest and properly made award to a technically superior, higher-priced offeror on the basis of initial proposals.

B-258262.2, January 20, 1995

95-1 CPD ¶ 3

Procurement

Specifications

- Minimum needs standards
- ■ Competitive restrictions
- ■ ■ GAO review

Protest that agency specification of data rights clauses exceeds agency's minimum needs is denied where based on alleged actions of procurement agency under prior contract which are not relevant to current procurement.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Ambiguity allegation
- ■ ■ ■ Interpretation

Solicitation requirement that offeror propose any additional products necessary to implement its proposed software is not ambiguous for failing to identify additional products, since each offeror is in the best position to know which additional products are necessary for its software.

Procurement

Socio-Economic Policies

■ Small business set-asides

■ ■ Use

■ ■ ■ Administrative discretion

Agency reasonably determined that neither total nor partial small business set-aside was appropriate for handling requirements of federal executive agencies under the mandatory Financial Management Software Systems Multiple Award Schedule.

B-258457, January 20, 1995

95-1 CPD ¶ 192

Procurement

Sealed Bidding

■ Bids

■ ■ Error correction

■ ■ ■ Low bid displacement

■ ■ ■ ■ Propriety

Procurement

Sealed Bidding

■ Bids

■ ■ Error correction

■ ■ ■ Pricing errors

■ ■ ■ ■ Line items

Where a bid shows a consistent pattern of "NC" (no charge) for a warranty line item, agency reasonably allowed correction of an inadvertently entered line item price in 1 of 4 option years for the same warranty since it is clear from the bid that the bidder intended to enter "NC" for that line item.

B-257373.2, January 23, 1995

95-1 CPD ¶ 31

Procurement

Bid Protests

■ GAO procedures

■ ■ GAO decisions

■ ■ ■ Reconsideration

Request for reconsideration is denied where protester does not show that prior decision denying its protest contained any errors of fact or law or present information not previously considered that warrants reversal or modification of our decision.

Procurement**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Cost estimates
- ■ ■ ■ Labor costs

Agency decision not to analyze cost data submitted with the awardee's proposal, and thus not considering direct labor rate contained in the data that appeared to be below the applicable Service Contract Act (SCA) minimum rate, where a fixed-price contract was contemplated, is unobjectionable where there was no solicitation requirement for submission of cost and pricing data, and nothing else on the face of the proposal which suggested that the awardee intended to violate the SCA.

Procurement**Competitive Negotiation**

- Discussion
- ■ Determination criteria

Where evaluators assigned protester's proposed training plan a high, but not perfect, score (8 out of 10 available points), agency was not required to discuss this matter with the protester during negotiations.

Procurement**Competitive Negotiation**

- Contract awards
- ■ Administrative discretion
- ■ ■ Technical equality
- ■ ■ ■ Cost savings

Where contracting officer reasonably concludes that, notwithstanding a difference in technical rating scores, two proposals were technically equal, selection of lower-priced proposal is unobjectionable.

Procurement**Sealed Bidding**

- Contract awards
- ■ Multiple/aggregate awards

Agency is required to make multiple awards, rather than an aggregate award, where invitation for bid (IFB) listed required quantities of explosives as ten separate contract line items, each covering a different size and quantity of explosives; the IFB did not require an aggregate award; the requirement is clearly severable; and multiple awards will result in a lower overall price to the government.

B-257798.2, January 24, 1995

95-1 CPD ¶ 37

Procurement

Special Procurement Methods/Categories

- Research/development contracts
- ■ Offers
- ■ ■ Evaluation

Protest that proposals submitted by the awardee and proposed awardee under a Program Research Development Announcement (PRDA) procurement should have been disqualified from the competition for their alleged failure to adhere to restrictions in the PRDA is denied where the record shows that the agency's conclusions regarding compliance with the PRDA requirements were reasonable.

Procurement

Special Procurement Methods/Categories

- Research/development contracts
- ■ Offers
- ■ ■ Evaluation

Protest that evaluation was flawed by agency's failure to give stated evaluation criteria the relative importance that was established in the solicitation is denied where, in response to protest, the agency reevaluated the proposals (applying the properly weighted evaluation criteria), and the reevaluation did not change the awardee's positions as the highest ranking offerors, establishing that the error had not prejudiced the protester's position.

B-258451, January 24, 1995

95-1 CPD ¶ 38

Procurement

Sealed Bidding

- Invitations for bids
- ■ Amendments
- ■ ■ Acknowledgment
- ■ ■ ■ Responsiveness

Procurement

Sealed Bidding

- Invitations for bids
- ■ Amendments
- ■ ■ Materiality

A bidder's failure to acknowledge an amendment that changed the required color of roofing panels may not be treated as a minor informality under circumstances indicating that the color requirement is material.

B-258460, B-258461, January 24, 1995

95-1 CPD ¶ 3

Procurement

Sealed Bidding

- Invitations for bids
- ■ Post-bid opening cancellation
- ■ ■ Justification
- ■ ■ ■ Sufficiency

Agency had a compelling reason to cancel invitation for bids after bid opening where the solicitation did not identify the agency's actual requirements and the three low bidders were misled.

B-258514, January 24, 1995

95-1 CPD ¶ 4

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Cancellation
- ■ ■ Justification
- ■ ■ ■ GAO review

Protest that agency improperly canceled solicitation after receipt of best and final offers is denied where, during the course of the acquisition, the agency became aware of significant deficiencies in the solicitation's technical data package which created a high risk of unsatisfactory performance on the part of prospective offerors.

B-258651, January 24, 1995

95-1 CPD ¶ 4

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Downgrading
- ■ ■ ■ Propriety

Proposal was reasonably downgraded where it failed to commit to meet performance requirement and the agency's concern about this issue was repeatedly brought to the offeror's attention during discussions.

B-258862, January 24, 1995

95-1 CPD ¶ 4

Procurement

Sealed Bidding

- Bids
- ■ Error correction
- ■ ■ Pricing errors
- ■ ■ ■ Line items

Agency reasonably permitted correction of mistake in allocation between two line items where the bidder provided clear and convincing evidence of a mistake and of the intended allocation.

B-257612, January 25, 1995**Procurement****Payment/Discharge**

- Shipment
- ■ Damages
- ■ ■ Carrier liability
- ■ ■ ■ Presumptions

When the government and a carrier each have custody of household goods during a portion of a move and it is factually impossible to determine which is liable for damage, the 50/50 rule provides that the government may settle a damage claim against the carrier for 50 percent of the amount claimed. Because the purpose of the 50/50 rule is to reduce the amount of time and paperwork involved in settling such claims, the carrier is deemed to have waived the rule if it does not settle the claim promptly or chooses to argue its liability as to individual articles in the shipment.

B-257613, January 25, 1995**Procurement****Payment/Discharge**

- Shipment
- ■ Carrier liability
- ■ ■ Burden of proof

The General Accounting Office will not question an agency's calculation of the value of damages to items in a shipment of household goods unless the carrier presents clear and convincing evidence that the agency's calculation was unreasonable.

B-257884, January 25, 1995**Procurement****Payment/Discharge**

- Shipment
- ■ Carrier liability
- ■ ■ Burden of proof

When a *prima facie* case of carrier liability has been established, the burden shifts to the carrier to rebut that liability. When the nature of the internal damage to an item is consistent with its having been mishandled or dropped and the shipper states the item was in working order at the time of tender, the mere lack of external damage is not sufficient proof to rebut the carrier's liability.

B-258480, January 25, 1995

95-1 CPD ¶ 1

Procurement

Sealed Bidding

- Invitations for bids
- ■ Amendments
- ■ ■ Notification

Protester's late receipt of a solicitation amendment, which allegedly had the effect of causing the protester to decide not to submit a bid, does not warrant resolicitation of the procurement where there is no evidence that the agency deliberately attempted to exclude the protester from the competition.

B-256426.4, January 26, 1995

95-1 CPD ¶ 15

Procurement

REDACTED VERSION

Special Procurement Methods/Categories

- Computer equipment/services
- ■ Offers
- ■ ■ Evaluation
- ■ ■ ■ Technical acceptability

Protest against evaluation of protester's computer software capabilities as presenting high risk is denied where protester failed to furnish requested historical data regarding validity of its software estimating methodology and the historical data which it did submit did not demonstrate the reliability of the firm's software development estimates.

Procurement

Special Procurement Methods/Categories

- Computer software
- ■ Costs
- ■ ■ Evaluation

Agency's approach to estimating most probable cost (MPC) of required computer software development effort for aircraft maintenance trainer is unobjectionable where the agency used commercial software estimating program to arrive at offeror-unique MPC based on an adjusted cost model, and the record provides no basis to question the validity of either the information or the approach used.

B-258529, January 26, 1995

95-1 CPD ¶ 5

Procurement

Specifications

- Minimum needs standards
- ■ Competitive restrictions
- ■ ■ Design specifications
- ■ ■ ■ Justification

Protest that solicitation unduly restricts competition by specifying the use of a glass lining in water storage tanks being procured is denied where the agency had a reasonable basis for placing a priority on low maintenance and for concluding that glass-lined tanks would result in lower maintenance costs.

B-257184.2, January 27, 1995

95-1 CPD ¶ 94
REDACTED VERSION

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Health care
- ■ ■ ■ Review

Agency's methodology for assessing probable health care costs was reasonable and consistent with the evaluation criteria set forth in the solicitation.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Protest of the evaluation of the protester's technical proposal is denied where some of the bases of protest were not timely raised, others are without merit, and the remaining ones are so limited in scope as not to call into question the propriety of the source selection.

Procurement

Competitive Negotiation

- Discussion
- ■ Determination criteria

Meeting held between agency and apparent awardee immediately prior to award did not constitute improper discussions where the meeting concerned only details related to the offeror's capability to perform one aspect of its proposed solution and did not involve any modification of the proposal.

B-258277.2, January 27, 1995

95-1 CPD ¶ 54

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Cancellation
- ■ ■ Justification
- ■ ■ ■ GAO review

Even if personal animus supplied part of an agency's motivation for canceling solicitations, the cancellations are not objectionable where the procuring activity reasonably determined that performing the services in-house was in its best interest because it would assure the continuity of the services.

B-258430.2, January 27, 1995

95-1 CPD ¶ 1

Procurement

Competitive Negotiation

- Offers
- ■ Cost realism
- ■ ■ Evaluation
- ■ ■ ■ Administrative discretion

Where solicitation provided for evaluation of cost realism, agency properly found protester's proposal to represent a high performance risk due to its proposing wages below those paid on other Na contracts for similar work and for comparable civil service wages.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Personnel experience

Where resumes included in protester's technical proposal failed to establish that all proposed personnel met solicitation experience requirements, agency properly evaluated personnel as marginal or unsatisfactory.

Procurement

Competitive Negotiation

- Contract awards
- ■ Initial-offer awards
- ■ ■ Propriety

Agency properly awarded contract on the basis of initial proposals to offeror with higher technical rated proposal and higher price, where remaining proposals were technically marginal and reflected unrealistically low pricing.

B-258543, January 27, 1995

95-1 CPD ¶ 4

Procurement

Competitive Negotiation

- Hand-carried offers
- ■ Late submission
- ■ ■ Acceptance criteria

Agency properly rejected as late a bid sent by U.S. Postal Service Express Mail Second Day Service 1 working day before bid opening and delivered to the government installation approximately 2-1 hours prior to the scheduled bid opening, where the mailing label of the outer Express Mail envelope received by the agency was not marked as containing a bid, with the result that the bid was delivered by the agency's regular internal mail delivery and arrived at the bid opening room after bid opening.

B-252754.3, January 30, 1995

Procurement

Contract Disputes

- **Breach of contract**
- ■ **Settlement terms**

GAO defers to GSA's allocation of liability to NRC in settlement of breach of contract with the Heritage Reporting Corporation. NRC did not request a waiver from GSA, under FAR section 8.404-3; of NRC's obligation to order off of the contract, and NRC has provided no documentation to suggest that GSA had assented to NRC's ordering off-schedule.

B-258507, January 30, 1995***

95-1 CPD ¶ 45

Procurement

Sealed Bidding

- **Bids**
- ■ **Modification**
- ■ ■ **Late submission**
- ■ ■ ■ **Determination**

Procurement

Sealed Bidding

- **Bids**
- ■ **Modification**
- ■ ■ **Submission methods**
- ■ ■ ■ **Facsimile**

Protest challenging agency's rejection of facsimile bid modification as late is sustained on grounds that government mishandling was paramount cause of modification's late receipt where: (1) facsimile bid modification was received at least 7 minutes prior to bid opening time; (2) the facsimile machine was located a short distance from both the room designated in the solicitation for receipt of bids and the bid opening room; (3) the protester properly identified the bid modification as directed by the solicitation and provided timely telephone notice to the agency of its facsimile transmission; and (4) record establishes that mail room clerks unreasonably delayed promptly delivering the modification.

B-258567, January 30, 1995

95-1 CPD ¶ 46

Procurement

Competitive Negotiation

- **Offers**
- ■ **Evaluation errors**
- ■ ■ **Evaluation criteria**
- ■ ■ ■ **Application**

Protest that contracting agency improperly evaluated protester's proposal under solicitation which sought offers for design and construction of a controlled environment laboratory is denied where record shows that the evaluation was reasonable and consistent with the stated evaluation criteria and protester does not refute the evaluation results.

B-258672, January 30, 1995

95-1 CPD ¶ 13
REDACTED VERSION

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Interpretation

Generally, where a dispute exists as to the actual meaning of solicitation requirements, the General Accounting Office will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all provisions in the solicitation; to be reasonable, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner.

Procurement

Competitive Negotiation

- Offers
- ■ Technical acceptability
- ■ ■ Deficiency
- ■ ■ ■ Blanket offers of compliance

Blanket statements of compliance are generally not sufficient to demonstrate technical acceptability; rather, an offeror must affirmatively establish compliance with solicitation requirements.

B-258563, B-259265, January 31, 1995***

95-1 CPD ¶ 5

Procurement

Socio-Economic Policies

- Small business set-aside
- ■ Use
- ■ ■ Procedural defects

Protest challenging agency's failure to set procurement aside for small businesses is sustained where agency anticipated the receipt of bids from at least two small businesses and did not have a reasonable basis for concluding that award at a fair market price could not be expected.

B-258700, January 31, 1995

95-1 CPD ¶ 5

Procurement

Competitive Negotiation

- Offers
- ■ Risks
- ■ ■ Personnel
- ■ ■ ■ Availability

Protest that agency improperly evaluated performance risk associated with the proposed awardee proposal which contained allegedly low labor rates and an uncompensated overtime policy is denied where, based on Defense Contract Audit Agency reports, the agency reasonably determined that the rates proposed and the overtime policy were consistent with the offeror's payroll data and normal business practices.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Time/materials contracts
- ■ ■ ■ Wage rates

Procurement

Contract Types

- Time/materials contracts
- ■ Labor costs

Where solicitation contemplated award of a fixed-price time-and-materials contract, agency properly based its comparison of prices on rates offered in proposals and not on rates which, at the time of award, an offeror may be paying similarly qualified personnel.

Procurement

Competitive Negotiation

- Contract awards
- ■ Initial-offer awards
- ■ ■ Discussion
- ■ ■ ■ Propriety

Where solicitation provided that the agency intended to evaluate proposals and make award on the basis of initial proposals without conducting discussions, agency was not required to conduct discussions with the protester and properly made award on the basis of initial proposals.

B-258728, January 31, 1995

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Contracting agency's determination that protester's initial proposal was technically unacceptable and outside the competitive range was reasonable where the proposal contained [DELETED] deficiencies, [DELETED].

95-1 CPD ¶ 155

REDACTED VERSION

February 1995

Civilian Personnel

B-256331, February 1, 1995

Civilian Personnel

Travel

- Temporary duty
- ■ Per diem
- ■ ■ Additional expenses

An employee who was authorized to use his privately-owned vehicle, as being advantageous to the government, to travel to and from a temporary duty (TDY) station claims an extra day of per diem and additional mileage allowance due to his delayed departure from the TDY station when his car broke down, and for his spouse's drive to the TDY station to return him home and later to return to the TDY station to retrieve his vehicle. It is within the agency's discretion to approve additional per diem and transportation allowances in such circumstances, if the agency determines that the employee acted reasonably, and to the extent the additional expenses are determined reasonable.

B-255045, February 6, 1995***

Civilian Personnel

Relocation

- Temporary quarters
- ■ Actual subsistence expenses
- ■ ■ Eligibility
- ■ ■ ■ Additional expenses

A transferred Navy employee's commanding officer initially authorized him two 30-day extensions of his initial 60-day temporary quarters period on the basis that he could not find existing housing to accommodate his wife's disability and was required to contract for a new house with a scheduled settlement date beyond the initial 60-day period. The agency's Personnel Support Activity disallowed payment of the employee's voucher for the extended period because the employee's wife's condition arose before the transfer and did not qualify as a circumstance occurring during the initial temporary quarters period, as required by 41 C.F.R. § 302-5.2(a)(2) (1994). However, since the General Accounting Office has held that under this regulation an extension may be given for a housing shortage that prevents an employee from locating an adequate residence during the initial period of temporary quarters, the matter is remanded to the agency to determine whether the employee should be granted the extensions.

B-258766, February 10, 1995*****Civilian Personnel****Relocation**

- Residence transaction expenses
- ■ Reimbursement
- ■ ■ Eligibility
- ■ ■ ■ Residency

Incident to a permanent change of station, an employee claims reimbursement for the real estate sales expenses incurred in the sale of his former family residence, although he had moved out of the residence 3 years previously when his marriage deteriorated, and he was living in an apartment, from which he commuted to work, at the time he first learned of his transfer. Under the Federal Travel Regulation, real estate sales expenses normally are reimbursable only for the residence from which the employee commutes to work at his official station. Although an exception is recognized when an employee, pending a divorce, involuntarily vacated the family residence pursuant to a court order in the instant case, the employee did not vacate the residence pursuant to a court order, and at the time of the transfer, he had not lived in and commuted from the residence in 3 years, and he had been divorced for 2 years from his wife who had exclusive use of the residence. Therefore, the exception to the rule does not apply, and his claim is denied.

B-257861, February 15, 1995*****Civilian Personnel****Relocation**

- Permanent residences
- ■ Determination
- ■ ■ Administrative discretion

An employee who had previously resided in California traveled to Hawaii at his own expense when he was hired locally by an agency to a position for which a transportation agreement was not offered by the agency. About 1½ years later he accepted a transfer to Saipan incident to which he signed an employment agreement designating Hawaii as his actual place of residence at the time of the transfer. Fourteen years later he sought to have the agency redesignate California as his residence at the time of his transfer. The agency denied his request. The designation of an employee's actual place of residence is a matter primarily for the agency to determine, and GAO will not question any reasonable determination by the agency. In this case the agency's determination, well-supported by the facts, is affirmed.

B-258086, February 15, 1995

Civilian Personnel

Relocation

- Residence transaction expenses
- ■ Additional expenses
- ■ ■ Reimbursement
- ■ ■ ■ Eligibility

Civilian Personnel

Relocation

- Spouses
- ■ Determination

A female employee claims that another adult female with whom she has a long-term relationship may be considered as her "spouse" and a member of her immediate family, thereby entitling her to additional relocation expenses. Her claim is denied since there is neither statutory nor regulatory authority for considering another adult female either as the "spouse" of the employee or as a member of the employee's family.

B-258852, February 15, 1995

Civilian Personnel

Travel

- Lodging
- ■ Expenses
- ■ ■ Noncommercial lodging

An agency's disallowance of an employee's claim for \$50 per day paid to the employee's brother for lodging with him while on temporary duty is sustained. Federal Travel Regulation, § 301-7.9(c)(3) requires that before any "additional costs" that a relative "actually incurs" for providing lodging to an employee may be reimbursed, the additional costs must be substantiated, and that neither amounts based on rates for commercial lodgings nor flat "token" amounts are acceptable. A receipt from the employee's brother and a statement from the employee that documentation of costs actually incurred would be a burden to provide, was insufficient substantiation under § 301-7.9(c)(3).

B-259770, February 15, 1995

Civilian Personnel

Compensation

- Additional compensation
- ■ Eligibility
- ■ ■ Weekends/holidays
- ■ ■ ■ Annual leave

In regard to a constituent's complaint, a Senator is advised that the authority for premium pay for work performed on a holiday is found at 5 U.S.C. § 5546 and in implementing regulations issued by the Office of Personnel Management, which are found at 5 C.F.R. § 551.131. These provisions limit the premium that may be paid for 8 hours work on a holiday to 8 hours extra pay. The constituent argues that this limitation gives a greater benefit to those who are given the day off and suggests that the premium payable be increased to two times the basic pay rate plus the regular 8 hours of pay.

The suggested remedy to this perceived inequity would require new legislation.

Civilian Personnel

Compensation

- Flexible schedules
- ■ Administrative discretion

In regard to a constituent's complaint, a Senator is advised that under the Flexible and Compressed Work Schedules Act, an agency may establish a compressed work schedule program, and the agency may discontinue such a program if it finds "adverse agency impact." Generally, this is a matter of agency discretion, but if the program was established under a collective bargaining agreement, determination to discontinue it may be subject to review by the Federal Services Impasses Panel.

B-260092, February 15, 1995

Civilian Personnel

Compensation

- Administrative settlement
- ■ GAO authority

A United States Senator is advised that GAO does not have jurisdiction to review an agency's denial of a constituent's claim under the Military Personnel and Civilian Employees' Claims Act, 31 U.S.C. § 3721 (1988), since the statute provides that the agency's settlement of claims under that Act are "final and conclusive." 31 U.S.C. § 3721(k). The Senator is further advised that federal courts have held that they too have no such jurisdiction, but it is suggested that his constituent may consider seeking review within the agency, if he has not done so.

B-259124, February 23, 1995

Civilian Personnel

Compensation

- Overpayments
- ■ Error detection
- ■ ■ Debt collection
- ■ ■ ■ Waiver

Due to administrative error, an agency erroneously paid an employee an overseas post allowance. Because a similarly situated coworker was not receiving the allowance, the employee questioned his personnel office as to his entitlement to the allowance, and he was advised that he was so entitled. However, because of his continued doubt, the employee pursued the matter and later was told by personnel in the State Department that he was not entitled to the allowance. Nonetheless, he continued to receive the allowance for several more pay periods before the error was corrected. Waiver of his debt was properly limited to erroneous payments received before the State Department notified him of the error, and waiver of the subsequent erroneous payments was properly denied. Even though the employee received contradictory answers to his inquiries, when he received the State Department's advice, he was on notice of a possible error, and he should have set aside the questionable payments until the matter could be officially resolved.

Military Personnel

B-243410.3, February 3, 1995

Military Personnel

Pay

- Survivor benefits
- ■ Eligibility
- ■ ■ Dependents
- ■ ■ ■ Marital status

A valid marriage by a "dependent child" of a deceased service member terminates the Survivor Benefit Plan (SBP) annuity which the child was receiving notwithstanding the child became incapacitated prior to his eighteenth birthday because the SBP requires that a "dependent child" be unmarried. Nothing in the Americans with Disabilities Act has altered the above result.

B-258487, February 9, 1995

Military Personnel

Pay

- Overpayments
- ■ Direct payroll deposit
- ■ ■ Debt collection
- ■ ■ ■ Waiver

Former member is entitled to waiver of indebtedness under 10 U.S.C. § 2774 resulting from erroneous payment of direct deposit paycheck following discharge because member was not given final separation worksheet which showed how final pay was computed and because of numerous other errors in computation of final pay which prevented member from being able to compute final pay amount.

B-258265, February 10, 1995***

Military Personnel

Travel

- Temporary duty
- ■ Per diem
- ■ ■ Additional expenses

A member traveling to a new duty station with his dependents was delayed when his wife was hospitalized en route. His new commanding officer authorized additional travel time. Flat per diem is payable for the member and his dependents for the number of additional days authorized and actually used to complete the travel, since the Joint Federal Travel Regulations grant the commanding

officer discretion to authorize additional travel time.

B-258328, February 15, 1995

Military Personnel

Pay

- Survivor benefits
- Eligibility

Arrearage of retired pay and Survivor Benefit Plan premiums may not be paid to widow of deceased member because evidence of a valid decree of divorce from a former wife does not exist. Decree from court of competent jurisdiction establishing eligible marital status is necessary before payment can be made. Moreover, she is not the beneficiary of SBP because member never filed an election naming her his spouse as required by 10 U.S.C. § 1448(a)(5).

B-259530, February 16, 1995

Military Personnel

Pay

- Overpayments
- Error detection
- Debt collection
- Waiver

Where retiring member receives final pay which does not reflect amount of advance pay still outstanding and final Leave and Earnings Statement clearly shows balance remaining, member is at fault and waiver is not appropriate.

B-259199, February 22, 1995***

Military Personnel

Pay

- Overpayments
- Error detection
- Debt collection
- Waiver

An Air Force member's paydate was incorrectly established as April 15, 1976, instead of April 15, 1987. The incorrect paydate and years of service were reflected on his leave and earnings statements. The resulting overpayments may not be waived under 10 U.S.C. § 2774 because the member had a duty to verify the information on his leave and earnings statements and to bring any errors to the attention of the proper officials.

Procurement

B-258581, February 2, 1995

95-1 CPD ¶ 47

Procurement

Sealed Bidding

- Bid guarantees
- ■ Responsiveness
- ■ ■ Invitations for bids
- ■ ■ ■ Identification

The contracting agency properly rejected the protester's bid bond, where the solicitation number referenced on the bond had been "whited-out" and retyped without evidence of the surety's consent and there was another ongoing procurement to which the bond could refer.

B-259474.3, February 2, 1995

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ 10-day rule
- ■ ■ ■ Adverse agency actions

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ Effective dates
- ■ ■ ■ Facsimile

Receipt of a facsimile message from the contracting activity denying an agency-level protest constitutes initial adverse agency action requiring a subsequent protest to the General Accounting Office to be filed within 10 days after receipt.

Procurement**Competitive Negotiation**

- Alternate offers
- ■ Rejection
- ■ ■ Propriety

A contracting agency reasonably determined that the software data base system component proposed as an alternate product to the specified brand name data base was not acceptable because the protester's data base did not have the additional features present in the brand name data base to satisfy the agency's minimum needs.

Procurement**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Agency properly rejected protester's proposal as technically unacceptable where the solicitation required offerors to demonstrate simulated marksmanship trainers, and the protester, although afforded two opportunities almost 2 months apart, was able to satisfactorily demonstrate only 4 of the 11 required trainer weapons and was unable to demonstrate several required system capabilities.

Procurement**Socio-Economic Policies**

- Small businesses
- ■ Competency certification
- ■ ■ Eligibility
- ■ ■ ■ Criteria

Where a small business concern's proposal was found technically unacceptable based upon a comparative assessment under the stated evaluation criteria, including factors not related to responsibility as well as responsibility-related factors, the agency was not required to refer the matter to the Small Business Administration for a certificate of competency review.

Procurement**Competitive Negotiation**

- Competitive advantage
- ■ Conflicts of interest
- ■ ■ Allegation substantiation
- ■ ■ ■ Lacking

Agency was not obligated to disqualify awardee that had hired former government employee who had access to information concerning the (incumbent) protester's competition for and performance of its current contract, where awardee did not gain improper competitive advantage thereby, as there is no evidence that the individual provided any proprietary information to the awardee.

Procurement

Competitive Negotiation

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Cost savings

Protest against award to offeror with a lower-cost, lower-rated proposal is denied where agency reasonably determined that cost premium involved in awarding to higher-rated, higher-priced offeror was not justified.

B-258659, February 8, 1995***

95-1 CPD ¶ 51

Procurement

Sealed Bidding

- Low bids
- ■ Rejection
- ■ ■ Propriety

Contracting officer's rejection of protester's low bid on the basis that the bid contained a mistake was improper where there is no evidence in the record that the bid contained a mistake or was based on a misunderstanding of the work to be performed.

B-258598.2, et al., February 9, 1995

95-1 CPD ¶ 51

Procurement

Competitive Negotiation

- Discussion
- ■ Misleading information
- ■ ■ Allegation substantiation

Protests that the agency orally changed the basis for award during discussions with protesters—from "best value" to "low, technically acceptable"—and then failed to adhere to the changed award basis, are without merit.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Agency was not required to conduct discussions with the protester concerning corporate and employee experience where agency found the protester's technical and corporate experience acceptable—it was merely not as strong as the awardee's—and, in any case, had no reason to believe the protester had not provided all relevant past performance information, as required by the solicitation, or that the protester otherwise could make its proposal more competitive.

B-258637, February 9, 1995**Procurement****Sealed Bidding**

- Bids
- ■ Responsiveness
- ■ ■ Prices
- ■ ■ ■ Line items

Bid that included a price of \$0 for a contract line item that was subject to a statutory cost limitation could not be rejected as nonresponsive where there is no indication that the bid's pricing structure/apportionment of costs was designed to circumvent the statutory cost limitation.

B-258653, B-258653.2, February 9, 1995**95-1 CPD ¶ 61****Procurement****Sealed Bidding**

- Bids
- ■ Responsiveness
- ■ ■ Price omission
- ■ ■ ■ Line items

Agency properly rejected as nonresponsive a bid that failed to provide required line item prices for option years where intended prices for those items were not clearly demonstrated on the face of the bid and solicitation required bidders to submit all such prices to be evaluated for award.

Procurement**Sealed Bidding**

- Invitations for bids
- ■ Amendments
- ■ ■ Acknowledgment
- ■ ■ ■ Responsiveness

Procurement**Sealed Bidding**

- Invitations for bids
- ■ Amendments
- ■ ■ Materiality

Since responsiveness must be determined from the face of the bid, a bidder's failure to acknowledge a material amendment (adding additional work requirements) to the solicitation renders bid nonresponsive where bid does not clearly demonstrate that bidder's price includes work added by amendment or otherwise indicate receipt of amendment and agreement to its terms.

Procurement**Competitive Negotiation**

- Offers
- ■ Evaluation errors
- ■ ■ Non-prejudicial allegation

Protest that contracting agency improperly conducted post-best and final offer (BAFO) discussions with the awardee is denied where the record establishes that the protester would not have been the successful offeror in any case, and thus was not prejudiced by the agency's conduct of those post-BAFO discussions.

B-258655, February 10, 1995**Procurement****Bid Protests**

- GAO procedures
- ■ Protest timeliness
- ■ ■ 10-day rule

Protester was not required to protest prior to bid opening on an unambiguous "brand name or equal" invitation for bids for a chiller, which was set aside for small businesses offering small business products and which specified a large business product as the brand name, where the protester asserts that it was entitled to the award as the low bidder offering an equal product manufactured by a small business.

Procurement**Socio-Economic Policies**

- Small business set-asides
- ■ Contract awards
- ■ ■ Propriety

Under a small business set-aside, an agency improperly awarded a contract for a brand name or equal product to the low bidder offering an equal product of a large business; only a bid offering the equal product of a small business is responsive.

B-258666, February 10, 1995**Procurement****Small Purchase Method**

- Quotations
- ■ Rejection
- ■ ■ Personnel experience

Rejection of protester's quote under a small purchase procurement was reasonable where the protester failed to provide required proposed staff information that was specifically requested by the agency.

B-258671, February 13, 1995

95-1 CPD ¶ 10

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ Apparent solicitation improprieties

Protest that award was improperly made on a low-priced, technically acceptable basis instead of the best value basis assertedly required by the solicitation is dismissed as untimely where the solicitation contains a patent ambiguity in that it provides for both bases for award.

B-258674, February 13, 1995

95-1 CPD ¶ 11

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Descriptive literature
- ■ ■ ■ Adequacy

Agency properly rejected low bid for night viewing pocketscope with integral infrared illuminator nonresponsive where descriptive literature submitted with the bid failed to show that the offer product would satisfy the salient characteristic that the illuminator be integral with the pocketscope.

B-258699, B-258699.2, February 13, 1995

95-1 CPD ¶ 16

Procurement

Competitive Negotiation

- Discussion
- ■ Determination criteria

Procurement

Competitive Negotiation

- Discussion
- ■ Offers
- ■ ■ Clarification
- ■ ■ ■ Propriety

Where record shows that challenged agency contacts with offerors resulted in only minor changes to the proposals—correction of certifications, acknowledgment of nonmaterial amendments to the solicitation, and correction of extended prices—such contacts constituted clarifications, not discussion and protest contending that such contacts were improper is denied.

Procurement

Bid Protests

- Bias allegation
- ■ Allegation substantiation
- ■ ■ Burden of proof

Record does not support protester's allegation of bias where agency made award to offerors who submitted the lowest prices, as provided for in the solicitation.

Procurement

Contractor Qualification

- Responsibility
- ■ Contract terms
- ■ ■ Compliance
- ■ ■ ■ GAO review

Procurement

Contractor Qualification

- Responsibility/responsiveness distinctions

Allegation that awardees submitted false certificates of independent price determination concerns a matter of responsibility, which the General Accounting Office does not review.

B-258708, February 13, 1995***

95-1 CPD ¶ 65

Procurement

Competitive Negotiation

- Offers
- ■ Competitive ranges
- ■ ■ Exclusion
- ■ ■ ■ Justification

Protester's proposal was properly eliminated from the competitive range under the solicitation which called for industry-wide partnership teams to develop a new paradigm for the design and construction of residential housing, where the protester essentially limited its proposal to implementing only one new component of a house, failed to form a partnership team with broad industry representation, and failed to provide a detailed proposal with regard to two of the three required tasks.

B-258710, February 13, 1995

95-1 CPD ¶ 79

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Approved sources

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Non-prejudicial allegation

Procurement**Bid Protests**

- Allegation
- ■ Abandonment

Where protesters' response to the agency report fails to address specific arguments concerning und restrictive requirements raised in the initial protest and responded to in the report, General Accounti Office considers such issues abandoned.

Procurement**Specifications**

- Minimum needs standards
- ■ Determination
- ■ ■ Administrative discretion

Protest that agency has no need for item being procured, a mobile laboratory for use in Departme of Veterans Affairs hospitals, is denied where record shows that agency's determination of its need: explained in a detailed statement from the agency's director of pathology and laboratory services- reasonable.

Procurement**Socio-Economic Policies**

- Preferred products/services
- ■ American Indians
- ■ ■ Joint ventures

Agency properly rejected low bids submitted by a purported joint venture, where the docume: purporting to create the joint venture agreement provided that the joint venture was only for th purpose of bidding on contracts and that in the event contract awards were made, another joir venture would be created to perform the contracts.

Procurement**Competitive Negotiation**

- Competitive advantage
- ■ Allegation substantiation

Protest that contracting officials were biased in favor of the awardee because of their familiarity wit that firm from prior contracts is denied where the protester has provided no evidence and there: none in the evaluation materials to substantiate the allegation; the General Accounting Office will no attribute bias in the evaluation of proposals or award decision on the basis of inference or suppositio

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Prices
- ■ ■ ■ Auction prohibition

Protest that contracting officials used prohibited auction techniques during discussions is denied where the protester provided no evidence to support its conjecture; the General Accounting Office' review of evaluation materials, discussions questions, and awardee's responses and revisions shows that discussions questions asked of the awardee were directly related to perceived weaknesses in the awardee's initial offer or to areas of the offer that needed further explanation and made no reference either direct or indirect, to protester's proposed methodology or costs.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Options
- ■ ■ ■ Prices

Contracting agency reasonably evaluated "enhancing options" included in the protester's best and final offer (BAFO) and the associated costs of those options where: (1) it is clear from reading the entire BAFO that the options were included in the BAFO in response to concerns expressed by the evaluators regarding perceived weaknesses in the protester's initial offer, (2) the options were intended to improve the protester's initial proposal, and (3) at the agency's request, the protester subsequently confirmed in writing that the options and their associated costs were incorporated into its BAFO.

B-258786, February 13, 1995

95-1 CPD ¶ 80

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Interpretation
- ■ ■ Terms
- ■ ■ ■ Testing

Protest that agency improperly allowed awardee to elect not to participate in the solicitation's vibration demonstration is denied where the solicitation calls for offerors to at least commence such a demonstration, but does not prohibit award to an offeror that fails to do so, and the protester was not prejudiced by the agency's actions.

Procurement

Competitive Negotiation

- Discussion
- ■ Misleading information
- ■ ■ Allegation substantiation

Protest that agency's response to a pre-proposal question improperly misled offerors as to the importance of certain government-furnished equipment to be used in a demonstration, and improperly

failed to furnish such information, is denied where the agency's response was not misleading, and the protester was not prejudiced by the agency's refusal to provide such information.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Protest that agency improperly failed to discuss with the protester its choice of one type of communications cable over another is denied where both types of cable were technically acceptable.

B-258788, February 13, 1995

95-1 CPD ¶ 73

Procurement

Competitive Negotiation

- Requests for quotations
- ■ Cancellation
- ■ ■ Justification
- ■ ■ ■ Minimum needs standards

Agency reasonably canceled request for proposals after submission and evaluation of initial offer where the solicitation was materially defective and the agency may no longer require the solicited services.

B-258795, February 13, 1995

95-1 CPD ¶ 66

Procurement

Sealed Bidding

- Low bids
- ■ Error correction
- ■ ■ Price adjustments
- ■ ■ ■ Propriety

A low lump-sum bid for an item that exceeds the solicitation statutory cost limitation may be corrected based on the bidder's claim of a mistake in bid where clear and convincing evidence of the existence of the mistake and the intended bid price has been furnished to the agency.

B-258945, February 13, 1995

95-1 CPD ¶ 67

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Descriptive literature
- ■ ■ ■ Adequacy

Bid of "equal" product under brand name or equal solicitation was properly rejected as nonresponsive where the descriptive literature submitted with the bid failed to demonstrate compliance of the "equal" product with salient characteristics listed in the solicitation.

B-259154, February 13, 1995

95-1 CPD ¶ 6

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Descriptive literature
- ■ ■ ■ Absence

Where invitation for bids contained the standard descriptive literature clause but did not specify what type of literature was required and for what purpose, the solicitation effectively did not require submission of descriptive literature; bid which did not include descriptive literature thus cannot be rejected as nonresponsive.

B-255739.3, February 14, 1995

95-1 CPD ¶ 7

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Price negotiation

Where contracting agency did not consider protester's price to be too high for the scope of effort and technical approach proposed, agency was not required to conduct discussions on the price proposed by the protester.

B-257287, February 14, 1995

Procurement

Payment/Discharge

- Shipment costs
- ■ Additional costs
- ■ ■ Payment time periods
- ■ ■ ■ Statutes of limitation

A carrier's revised claim for additional charges is untimely under 31 U.S.C. § 3726 when the carrier initially files a claim for separate charges on a second movement under a Government Bill of Lading (GBL) transaction with the Administrator of General Services (or his designee) within 3 years of the original payment on the GBL, and then, on review to this Office, more than 3 years after original payment, the carrier revises its claim to assert that a different and higher line-haul rate should have been applied to both movements.

Procurement**Bid Protests**

- GAO procedures
- ■ Protest timeliness
- ■ ■ Apparent solicitation improprieties

Protest contention that agency awarded a legally insufficient contract lacking material terms dismissed as untimely when the alleged insufficiency was clear from the face of the solicitation, and where the protester waited until award before raising the issue.

Procurement**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Cost realism
- ■ ■ ■ Analysis

Agency is not required to perform a cost realism analysis where it awarded a fixed-price contract after full and open competition.

B-258343, B-258458, February 14, 1995**Procurement****Payment/Discharge**

- Shipment costs
- ■ Additional costs
- ■ ■ Bills of lading
- ■ ■ ■ Ambiguity

A carrier claiming additional charges based on the actual identity of an article transported years earlier has the burden of establishing the true identity of the article, where, at the time of shipment, the carrier knew from the contents of the bill of lading description prepared by the shipping agency that there were two possibly applicable classification ratings and the carrier failed to inspect the article or inquire concerning its pertinent classification characteristics.

B-258633.2, February 14, 1995**Procurement****Competitive Negotiation**

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Technical superiority

In an RFP for a survey of disabled employees, the agency reasonably, and in accordance with the evaluation criteria, found the awardee's higher-priced, technically superior proposal represented the best value instead of the protester's lower-priced proposal, which was reasonably found to be technically inferior.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Although an agency did not conduct meaningful discussions with the protester in that it failed to raise the issue of interviewer experience/availability—which the agency regarded as a major weakness in the protester's proposal—the protester was not prejudiced by the agency's failure since there is no suggestion that the protester would have proposed more experienced and available interviewers if this matter had been the subject of discussions.

B-258761, B-259152, February 14, 1995

95-1 CPD ¶ 83

Procurement

Sealed Bidding

- Bid guarantees
- ■ Responsiveness
- ■ ■ Sureties
- ■ ■ ■ Liability restrictions

Condition in bid bonds that would excuse surety from liability if the contract involves removal of asbestos material does not render bid bonds unacceptable where the specifications do not require removal of asbestos, and the remote possibility that such a requirement would be added to the contract would not occur until after the bid bond obligation had been discharged.

B-258769, February 14, 1995

95-1 CPD ¶ 84

Procurement

Socio-Economic Policies

- Preferred products/services
- ■ American Indians

The Bureau of Indian Affairs (BIA) did not clearly abuse its discretion in restricting a procurement for exclusive Indian participation, where the record does not support the protester's allegations that the set-aside was a ploy to award the contract to a bidder, with which BIA may have had a prearrangement even though the bidder is not an eligible Indian economic enterprise.

B-258794, B-258794.2, February 14, 1995

95-1 CPD ¶ 85

Procurement

Competitive Negotiation

- Alternate offers
- ■ Rejection
- ■ ■ Propriety

Agency properly rejected protester's alternate product for failure to supply original equipment manufacturer (OEM) data where this information was reasonably required by the agency to ensure the technical acceptability and functional integrity of any alternate offer for the required critical application item.

Procurement**Bid Protests**

- GAO procedures
- ■ Protest timeliness
- ■ ■ Apparent solicitation improprieties

Protest alleging that the awardee, the incumbent contractor, should not have been eligible for award due to an organizational conflict of interest is untimely where the protesters were on notice of the firm's participation in the procurement and that the agency had not restricted the firm's participation.

Procurement**Competitive Negotiation**

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Cost savings

Where the agency reasonably considered the awardee's proposal to install an electrical distribution system at no upfront installation costs to the government, and where the agency reasonably considered and evaluated potential cost liabilities to the government as a result of particular contingencies and conditions in the firm's proposal, the agency reasonably awarded the contract to the firm as the most advantageous offeror since, even considering reimbursement of the costs for the stated contingencies and conditions, the firm's evaluated costs were low.

Procurement**Competitive Negotiation**

- Offers
- ■ Evaluation errors
- ■ ■ Best-buy analysis

Agency reasonably found awardee's proposal superior to the protester's proposal under the state evaluation factors in solicitation for tugboat towing services, where the awardee offered newer tugboats, more experienced personnel and more applicable experience.

Procurement**Sealed Bidding**

- Bids
- ■ Public opening

Protest that bid opening official read only meaningless bid prices and did not make the bids available for inspection at bid opening is denied where the record shows that bid prices were read, although not in the detail which the protester would have preferred, and protester did not request to review the bids.

B-258856, February 15, 1995

95-1 CPD ¶ 89

Procurement

Specifications

- Minimum needs standards
- ■ Competitive restrictions
- ■ ■ Design specifications
- ■ ■ ■ Justification

Where solicitation required contractors to use either steel beams or bar joists to support the ceiling of a walk-in freezer to be installed in a warehouse building, agency properly rejected bid that proposed to support freezer ceiling by rods attached to the warehouse ceiling.

B-258928, February 15, 1995

95-1 CPD ¶ 91

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Proposal was properly found technically unacceptable where the agency reasonably interpreted the technical proposal as not satisfying a material solicitation requirement and where, as to several other material requirements, the offeror's best and final offer failed to furnish enough information to demonstrate the proposal's technical acceptability, notwithstanding discussion questions seeking further details concerning the proposed equipment.

B-258883, February 15, 1995

95-1 CPD ¶ 90

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Competition rights
- ■ ■ Contractors
- ■ ■ ■ Exclusion

Protest of agency's failure to solicit firm that (by facsimile transmission which the agency reports it did not receive) requested a copy of solicitation in response to a procurement synopsis in the *Commerce Business Daily* (CBD) is denied where protester's own records show possible problem with transmission and, although the protester knew—as a result of the CBD notice—that the agency estimated a July 21, 1994, closing date, the protester unreasonably delayed contacting the agency about its nonreceipt of the solicitation until almost 3 months after its initial request (which was also 2 weeks after the August 25 closing date); the protester did not avail itself of every reasonable opportunity to obtain the solicitation.

Procurement**Sealed Bidding**

- Invitations for bids
- ■ Interpretation
- ■ ■ Terms

Protest alleging that solicitation was prejudicially ambiguous with respect to application of federal ambulance specifications to convalescent transport vehicles is denied where only reasonable interpretation of the solicitation which gives full meaning to all of its provisions is that federal ambulance specifications are applicable only to certain components of required non-emergency vehicles.

Procurement**Bid Protests**

- GAO procedures
- ■ Interested parties
- ■ ■ Subcontractors

Agency conducted meaningful discussions by apprising the protester of the significant evaluation weaknesses in its technically acceptable proposal; an agency is not obligated to discuss every aspect of a technically acceptable proposal that receives less than the maximum score.

Procurement**Competitive Negotiation**

- Offers
- ■ Evaluation errors
- ■ ■ Evaluation criteria
- ■ ■ ■ Application

Agency did not apply unannounced criteria in evaluating the protester's proposal, but only considered matters reasonably related to the stated criteria in making qualitative distinctions between the proposals.

Procurement**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Cost realism
- ■ ■ ■ Analysis

Agency conducted an adequate cost realism analysis in finding the awardee's proposed cost reasonable, in the absence of cost information available from the Defense Contract Audit Agency based upon the agency's evaluation of the offerors' staffing levels and mixes, payroll documentation, invoices, vendor quotes, indirect pool breakdowns, prior contract costs, and the detailed discussion conducted to verify the reasonableness of the cost elements.

Procurement**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Personnel
- ■ ■ ■ Adequacy

Proposed awardee's request for substitution of a manager proposed in its best and final offer does not by itself establish that the proposed awardee engaged in improper "bait and switch" tactics; there is no basis to conclude that such tactics were used where the record contains no evidence which suggests that the offeror proposed the individual knowing that he would not be available for contract performance.

Procurement**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Protest against improper technical evaluation of proposals is denied where agency had reasonable basis for its conclusions.

Procurement**Competitive Negotiation**

- Competitive advantage
- ■ Conflicts of interest
- ■ ■ Allegation substantiation
- ■ ■ ■ Lacking

Protest that proposed awardee should have been disqualified from competing for a contract because it could be placed in a position of evaluating its own performance under other contracts is denied where agency reasonably determined that there are adequate safeguards in place to prevent the contractor from evaluating its own performance.

Procurement**Bid Protests**

- Non-prejudicial allegation
- ■ GAO review

Procurement**Competitive Negotiation**

- Best/final offers
- ■ Oral statements
- ■ ■ Acceptability

Protest that agency failed to notify protester that quotations would be considered firm offers under an oral solicitation is denied where record suggests protester had reason to offer its best price and,

in any case, there is no indication that the protester was prejudiced by any failure by the agency provide notice of the solicitation.

B-258817, February 21, 1995

95-1 CPD ¶ 1

Procurement

Competitive Negotiation

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Technical superiority

Protest against award to technically superior offeror is denied where solicitation provided that technical evaluation factor would be "moderately more important than" cost, superiority of the awardee's proposal was based on its offer of a staffing approach consistent with historical staffing and affording a greater likelihood of assuring satisfactory performance, and lower evaluated cost. The protester's proposal was based on proposing fewer, less qualified staff positions to accomplish more work than required under the prior contract.

B-258818, February 21, 1995

95-1 CPD ¶ 9

Procurement

Sealed Bidding

- Bid guarantees
- ■ Responsiveness
- ■ ■ Signatures
- ■ ■ ■ Powers of attorney

Agency improperly rejected bid due to an allegedly invalid bid bond where the power of attorney certification, which confirmed the authority of the person signing the bid bond on behalf of the surety, was dated 1 day before the bid bond was executed; because the bid documents provided no reasonable basis to doubt the continued validity of the power of attorney, the bid bond was not defective.

B-258819, February 21, 1995

95-1 CPD ¶ 9

Procurement

Competitive Negotiation

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Technical superiority

Protest against an award to offeror which submitted a technically superior, higher-priced proposal is denied where solicitation permitted such an award and where awardee's proposal was reasonably determined to be technically superior to protester's.

B-258829, February 21, 1995**95-1 CPD ¶ 100****Procurement****Competitive Negotiation**

- Offers
- ■ Evaluation errors
- ■ ■ Evaluation criteria
- ■ ■ ■ Application

Agency did not have a reasonable basis to reject a very low-priced, technically acceptable offer, based on an assumed lack of offeror understanding, under a solicitation that did not have an evaluation factor that encompassed offeror understanding, where the record does not support the agency's determination regarding the offeror's understanding and the offeror is otherwise responsible.

B-258831, February 21, 1995**95-1 CPD ¶ 101****Procurement****Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Cost realism
- ■ ■ ■ Analysis

Cost realism analysis of the awardee's proposal was reasonable where agency considered the realism of the awardee's proposed direct labor costs, number of labor hours, indirect costs, and subcontractor costs and the protester has not pointed to any costs or hours that it contends are unrealistic.

Procurement**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Technical equality

Where the record sets forth a reasonable basis for the agency's determination that two proposals are of equal technical merit, the agency's determination is unobjectionable, notwithstanding a difference in the point scores assigned to the proposals.

B-258876, February 21, 1995**95-1 CPD ¶ 102****Procurement****Sealed Bidding**

- Bids
- ■ Responsiveness
- ■ ■ Contractor liability
- ■ ■ ■ Liability restrictions

Protest contention that low bidder should have been rejected as nonresponsive because statements included in a cover letter conditioned the bid is sustained where one of the challenged statements limited rights of the government expressly reserved in the solicitation.

B-258923, February 21, 1995

95-1 CPD ¶ 10

Procurement

Sealed Bidding

- Low bids
- ■ Error correction
- ■ ■ Price adjustments
- ■ ■ ■ Propriety

Low bidder should be allowed to make an upward correction to its bid after opening where the record clearly establishes the claimed mistake and intended bid; that bidder relied on erroneous subcontract quotation to prepare its bid; and that bidder's price would remain substantially below next low bid even after recomputation based on subcontractor's revised quotation.

B-258931, February 21, 1995

95-1 CPD ¶ 10

Procurement

Competitive Negotiation

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Technical superiority

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Best-buy analysis

An agency reasonably concluded that award should be made based upon the technically superior proposal in a best value procurement, notwithstanding the modest cost premium associated with the proposal, where the solicitation stated that technical considerations were more important than cost and the cost/technical tradeoff was consistent with the stated evaluation scheme.

B-258967, February 21, 1995

95-1 CPD ¶ 10

Procurement

Sealed Bidding

- Invitations for bids
- ■ Evaluation criteria
- ■ ■ Prices
- ■ ■ ■ Options

Where solicitation stated that bids would be evaluated based on prices for all options, agency may deviate from that formula only where there is reasonable certainty that not all options will be exercised or that such an evaluation is otherwise not in the government's best interest.

Procurement**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Administrative discretion

Protest that contracting agency improperly evaluated awardee's and protester's technical proposals is denied where the record shows that both evaluations were reasonable and were conducted in accordance with the terms of the solicitation.

Procurement**Competitive Negotiation**

- Offers
- ■ Cost realism
- ■ ■ GAO review

Protest that contracting agency improperly conducted its cost realism analysis of protester's proposal is denied where the record shows that the allegation is without basis.

Procurement**Bid Protests**

- Allegation substantiation
- ■ Burden of proof

Protest that contracting agency improperly evaluated protester's technical proposal and that procurement was tainted by the involvement of incumbent personnel in a prior procurement action is denied where protester, in its comments, fails to rebut the agency's detailed responses to these allegations, and the allegations are not supported by the record.

Procurement**Bid Protests**

- Bias allegation
- ■ Allegation substantiation
- ■ ■ Burden of proof

Protest against award on ground that contracting officer was biased against protester and intended to favor another competitor for award is denied where record shows that the alleged bias did not result in any prejudice to the protester's competitive position.

Procurement**Competitive Negotiation**

- Offers
- ■ Evaluation errors
- ■ ■ Evaluation criteria
- ■ ■ ■ Application

Protester's contention that agency improperly evaluated its proposal is denied where the record shows that the agency evaluated protester's proposal in accordance with the evaluation criteria announced in the solicitation, and reasonably supports the protester's lower overall technical rating.

Procurement**Socio-Economic Policies**

- Small businesses
- ■ Competency certification
- ■ ■ Eligibility
- ■ ■ ■ Criteria

Where a small business offeror's proposal is found to be weak under a particular technical evaluation factor (related to personnel) based on a comparative analysis of competing proposals, there is no requirement for referral to the Small Business Administration under certificate of competency thresholds procedures.

Procurement**Competitive Negotiation**

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Technical superiority

Award to offeror submitting a higher-rated, higher-cost proposal is unobjectionable where request for proposals stated that technical considerations would be considered more important than cost, and the agency reasonably found that awardee's superior technical proposal was worth the higher cost.

Procurement**Bid Protests**

- GAO procedures
- ■ Preparation costs
- ■ ■ Administrative remedies

Protester is not entitled to award of the costs of filing and pursuing its protest where, in response to the protest, the agency took reasonably prompt corrective action.

Procurement**Competitive Negotiation**

- Contract awards
- ■ Personnel
- ■ ■ Substitution
- ■ ■ ■ Propriety

Procurement**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Personnel
- ■ ■ ■ Availability

Protest alleging "bait and switch" of proposed key personnel is denied where solicitation provided for substitution of key personnel under certain circumstances and, of more than 70 proposed key personnel, all but 4 were available or performing, and there was only 1 substitution.

Procurement**Competitive Negotiation**

- Offers
- ■ Personnel experience
- ■ ■ Contractor misrepresentation

Under solicitation which does not restrict substitution of non-key personnel, protest that one of awardee's team members had materially misrepresented the availability of its non-key personnel is without merit; virtually all of the proposed personnel remained available, and only three non-key personnel had been substituted.

Procurement**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Personnel experience

Agency properly considered offeror's specific experience performing the work required under the statement of work where solicitation listed experience as an evaluation factor, since specific experience is intrinsically related to and encompassed by a general experience evaluation factor.

Procurement

Competitive Negotiation

- Offers
- ■ Acceptance time periods
- ■ ■ Expirations

Protest against agency acceptance of expired offer without reopening negotiations is denied where offeror originally offered more than the required minimum acceptance period and acceptance is not prejudicial to the competitive bidding system.

B-258944, February 22, 1995

95-1 CPD ¶ 11

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Prior contract performance

Protest that during technical evaluation agency improperly considered offerors' prior experience performing contracts for the specific system being acquired is denied where the evaluation factors encompassed consideration of such experience.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Protest that agency failed to conduct meaningful discussions in area of prior experience is denied where record shows that all areas of concern were actually brought to protester's attention.

B-258979, February 22, 1995

95-1 CPD ¶ 11

Procurement

Competitive Negotiation

- Offers
- ■ Competitive ranges
- ■ ■ Exclusion

Evaluation of protester's proposal was proper where the reasons specified for excluding proposal from the competitive range were reasonably related to evaluation factors and subfactors, and other proposal preparation information set forth in the solicitation.

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ 10-day rule
- ■ ■ ■ Administrative discretion

Allegations raised for the first time in the protester's comments on the agency's administrative report are untimely, since they were not raised within 10 working days after protester first knew of the bases for the allegations.

B-258942, February 23, 1995

95-1 CPD ¶ 114

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Personnel
- ■ ■ ■ Adequacy

Protest against the award of a service contract to a firm with allegedly unqualified key personnel is denied where record demonstrates that awardee proposed qualified personnel, notwithstanding the fact that the agency permitted post-award personnel substitutions.

Procurement

Competitive Negotiation

- Below-cost offers
- ■ Acceptability

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Wage rates

Protest allegation that awardee proposed wage rates below those required by the Service Contract Act (SCA) is denied where awardee did not take exception to the requirement to pay SCA wages and, in such circumstances, was free to submit a below-cost offer.

B-258983, February 27, 1995

95-1 CPD ¶ 115

Procurement

Competitive Negotiation

- Offers
- ■ Competitive ranges
- ■ ■ Exclusion
- ■ ■ ■ Administrative discretion

Agency reasonably made a determination to exclude the protester's proposal from the competitive range, despite its low price, where the solicitation gave primary weight to technical factors, and the record supports the evaluators' determination that to become acceptable, the proposal would have had

to be completely rewritten.

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ 10-day rule

Protest of agency's failure to place procurement under the section 8(a) program is untimely where allegation is based on events which took place prior to receipt of proposals, but issue was not raised until more than 3 months after the time set for submission of initial proposals.

B-258990, February 27, 1995***

95-1 CPD ¶ 11

Procurement

Competitive Negotiation

- Offers
- ■ Competitive ranges
- ■ ■ Exclusion
- ■ ■ ■ Administrative discretion

Protest challenging exclusion from competitive range is denied where the protester fails to raise a specific challenge to the evaluation of proposals, and where the agency accurately determined that the protester's lower-rated, significantly higher-priced proposal had no reasonable chance for award.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Protest that agency acted improperly by failing to hold face-to-face discussions is denied where the record shows that the agency held extensive written discussions with the offeror prior to excluding it from the competitive range and because there is no requirement that agencies conduct oral discussions rather than written discussions.

B-257939.5, February 28, 1995

95-1 CPD ¶ 21

Procurement

REDACTED VERSION

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Subcontractors

Protest that the agency used unstated evaluation factors when the evaluators considered issues related to the protester's proposed use of [DELETED] subcontractors is denied where the protester's proposal showed that the protester depended upon subcontractor personnel and expertise to perform a significant portion of the work, and the agency's evaluation of subcontractor matters was reasonable and consistent with the solicitation evaluation scheme.

Procurement

Competitive Negotiation

■ Discussion

■■ Determination criteria

Agency was not required to hold discussions regarding the protester's personnel qualifications and corporate capability and experience since the protester's proposal was rated as adequate or better on these evaluation factors/subfactors, and agencies are not required to point out elements of acceptable proposals that receive less than the maximum evaluation score.

Procurement

Competitive Negotiation

■ Offers

■■ Costs

■■■ Fixed-price contracts

Protest alleging that the awardee "gamed" its proposal for a cost-plus-fixed-fee contract by offering low-priced subcontractor personnel when the awardee will actually use its own higher-priced employees to perform the work is denied where there is no evidence to support the allegation and the contract requires contracting officer approval of the contractor's staffing plan for each work assignment under the contract.

B-258996, February 28, 1995

95-1 CPD ¶ 117

Procurement

Sealed Bidding

■ Low bids

■■ Error correction

■■■ Price adjustments

■■■■ Propriety

Agency properly allowed correction of mistake in apparent low bid where the record clearly shows the existence of the mistake and of the intended bid, and the corrected bid remains below the next low bid.

B-258999, February 28, 1995

95-1 CPD ¶ 121

Procurement

Competitive Negotiation

■ Offers

■■ Evaluation

■■■ Downgrading

■■■■ Propriety

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Personnel experience

Where protester's proposal includes resumes with insufficient information to demonstrate compliance of proposed key personnel with the solicitation's requirements for specific levels of experience, downgrading of proposal for this reason is reasonable.

Procurement

Competitive Negotiation

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Technical superiority

Award to offeror submitting higher-priced, technically superior proposal under request for proposal that gave greater weight to technical merit than to price is justified where contracting agency reasonably determined that acceptance of the superior proposal was worth the additional cost.

B-259013, February 28, 1995***

95-1 CPD ¶ 12

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Subcontractors

Agency's consideration of an offeror's subcontractor's capabilities as well as the offeror's determining offeror capability was proper where the amended solicitation allowed for the potential prime contractor in agreement with its identified subcontractors to perform the contract services as a team and for the offeror's capability to be determined on that basis.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Allegation that contracting agency failed to conduct meaningful discussions is denied where the weaknesses at issue were not considered significant during evaluation of the protester's otherwise technically acceptable proposal and did not preclude the protester from having a reasonable chance of receiving the award.

B-259014, February 28, 1995

Procurement

REDACTED VERSION

Competitive Negotiation

- Offers
- ■ Competitive ranges
- ■ ■ Exclusion
- ■ ■ ■ Administrative discretion

Agency properly excluded an offeror's proposal from further consideration under request for proposals (RFP) for building management services where the offeror failed to show that it met the RFP's qualification criterion that it have been "actively engaged" in the marketing, leasing, and operation of three retail centers within the last 6 years.

B-259016, February 28, 1995

95-1 CPD ¶ 123

Procurement

Competitive Negotiation

- Technical evaluation boards
- ■ Bias allegation
- ■ ■ Allegation substantiation
- ■ ■ ■ Evidence sufficiency

Protest that incumbent's proposal was not selected for award as a result of one evaluator's alleged bias is denied where: (1) evaluator's statements that allegedly show bias have been reasonably explained in a manner which does not indicate any bias against the protester; and (2) record shows that agency's evaluation of protester's and awardee's proposals was proper.

March 1995

Appropriations/Financial Management

B-257825, March 15, 1995

Appropriations/Financial Management

Obligation

- Expenditure recording
- ■ Closed accounts

The Federal Highway Administration (FHWA), because of errors in its accounting system, did not bill the Federal Aviation Administration (FAA) for telecommunications services until after cancellation of the FAA's merged ("M") operations appropriations accounts, which should have been charged for the services. The Department of the Treasury denied the FAA request for restoration of amounts from closed "M" accounts to cover the costs of the services. GAO concurs in the Treasury denial because the error in question is not an "obvious clerical error" in reporting which may be corrected under Treasury Financial Management Bulletin No. 94-04, December 31, 1993. The error was caused by a deficiency in FHWA's accounting system, but exacerbated by FAA's accounting system's failure to identify these amounts as remaining payable to FHWA.

B-259926, March 31, 1995

Appropriations/Financial Management

Accountable Officers

- Liability
- ■ Illegal/improper payments

The Bureau of Prisons requested relief of accountable officer held liable for an improper payment of funds. The alternate certifying officer improperly approved payment for purchases prior to the purchases being ratified by the contracting officer. Since the Bureau of Prisons received the services for which it bargained and all other ratification requirements were met ratification was proper. The only defect in the payment was that the certifying officer prematurely approved payment, there was no loss to the government and no need to grant relief.

B-260563, March 31, 1995 ***

Appropriations/Financial Management

Accountable Officers

- Relief
- ■ Physical losses
- ■ ■ Embezzlement

Internal Revenue Service official accountable for a loss of tax collections is relieved from liability under 31 U.S.C. § 3527(a). The record indicates that the loss was directly attributable to embezzlement by a subordinate and occurred without fault or negligence on the part of the accountable officer. The record also indicates that the accountable officer followed agency procedure and provided reasonable supervision.

Appropriations/Financial Management

Accountable Officers

- Relief
- ■ Physical losses
- ■ ■ Statutes of limitation

Under 31 U.S.C. § 3526(c), the Comptroller General is authorized to settle accounts of accountable officers, and hence to grant or deny relief "within 3 years after the date the Comptroller General receives the account." This statute of limitations does not apply to physical losses. The following three decisions erroneously applied this statute of limitations to physical losses and for that reason should not be followed: B-254454, Nov. 19, 1993; B-248555, June 3, 1992; B-235401, Dec. 6, 1989.

Civilian Personnel

B-256991, March 1, 1995

Civilian Personnel

Compensation

- Compensation retention
- ■ Administrative regulations

Reassigned excepted service employee was granted retained pay, but claims additional retained pay. Since the Department of Defense granted a teacher retained pay by administrative action, rather than pursuant to 5 U.S.C. § 5363 (1988), that statute and the Office of Personnel Management's regulations promulgated pursuant to it, are not applicable to determine the rate of retained pay. When the Department of Defense (DOD) changed claimant's position from an Administrative Coordinator to a teacher, in lieu of separation, the DOD correctly granted him retained pay, by administrative action, based on the 10-month schedule

B-257971, March 3, 1995 ***

Civilian Personnel

Compensation

- Overpayments
- ■ Error detection
- ■ ■ Debt collection
- ■ ■ ■ Waiver

An employee, whose temporary promotion to grade GM-13, step 00, was canceled, should have reverted to his former grade and pay as a GS-12, step 6. Although the employee brought the error to the attention of his supervisor, he continued to be paid at the grade GM-13 level. Waiver of the debt is denied. Since the employee accepted payments known to be erroneous, he cannot reasonably expect to retain them and should make provision for eventual repayment. The fact that the employee may have brought the situation promptly to the attention of proper authorities does not alter that result.

Civilian Personnel

Compensation

- **Overpayments**
- ■ **Error detection**
- ■ ■ **Debt collection**
- ■ ■ ■ **Waiver**

An employee, whose temporary position as a grade GM-13, step 00, was canceled, should have reverted to his former grade and pay as a GS-12, step 6. Because of administrative error, he continued to be paid at the GM-13 level until he was transferred. On transfer, his pay should have been established at step 6 of grade 12, however, it was erroneously established at step 8 of that grade, which was a rate of pay higher than the erroneous GM-13 pay rate he had been receiving. Waiver of the debt is denied. Since he was aware of the earlier erroneous payment, he also had to know that he was not entitled to the pay of a grade GS-12, step 8, or at least should have questioned it.

B-253202.2, March 9, 1995 ***

Civilian Personnel

Relocation

- **Residence transaction expenses**
- ■ **Reimbursement**
- ■ ■ **Eligibility**
- ■ ■ ■ **Residency**

Upon the request of a transferred employee, an agency official authorized the agency's relocation service contractor to purchase the employee's residence listed on its travel documents. After the contractor had purchased the residence, the agency discovered that the listed residence was not the employee's residence at her old official station, and denied payment of the relocation service contractor's fee. The denial is sustained. Relocation service contracts entered into pursuant to U.S.C. § 5724c (1988) and 41 C.F.R. Part 302-12 (1994) are subject to the limitations and restrictions found in 5 U.S.C. § 5724a and in Chapter 302 of the Federal Travel Regulation (FTR). See 41 C.F.R. § 302-12.6(b)(2). Under these provisions, residence sales expenses may be reimbursed only if the residence is the one from which the employee regularly commuted to the old official station. Since the listed residence does not qualify as the employee's commuting residence at her old official station, the contractor's fee for purchasing the employee's residence may not be paid, even though the agency authorized the contractor to act.

B-253803, March 17, 1995

Civilian Personnel

Compensation

- **Overpayments**
- ■ **Error detection**
- ■ ■ **Debt collection**
- ■ ■ ■ **Waiver**

A Senior Executive Service (SES) employee granted a presidential appointment in 1986 elected to retain SES pay, rather than to accept the higher Executive Level IV pay of his new position. The employee understood, as a result of incorrect or misleading advice by agency advisors, that the SES pay election would entitle him to no less than the Level IV pay. Under applicable rules, the electi

limited his entitlement to the lower SES pay he had been receiving prior to the appointment. Nonetheless, the agency erroneously paid him at the higher Level IV rate for 6 years. When the agency discovered the error in 1992, it corrected the employee's pay rate, billed him for the overpayments, and transmitted the matter to GAO which concludes that the debt created by the overpayments is a debt arising from an erroneous payment, and as such may be considered for waiver under 5 U.S.C. § 5584. GAO concludes further that this debt meets the statutory and regulatory requirements for waiver, and it is therefore waived.

B-256410.2, March 22, 1995

Civilian Personnel

Relocation

- Overseas personnel
- ■ Quarters allowances
- ■ ■ Eligibility

An Army member stationed in Germany was preparing for retirement in Hawaii when he was offered a civilian position with the Army in Germany. Because it was too late to change his place of retirement, and apparently on advice of the officer offering the civilian position, the member traveled to Hawaii at his own expense and completed the retirement. He then returned to Germany and subsequently was employed in civilian positions over the next 12 years. He claimed living quarters allowance for the periods of his employment but the Army found him ineligible because he was neither hired from the United States for the foreign employment, nor did he fall within an exception that would allow eligibility for a member separating from the Army in a foreign area who is hired into a civilian position in the local area since he separated in Hawaii. The denial of the claim is sustained. That part of the claim for the period more than 6 years prior to its receipt by the Army or the General Accounting Office is barred from consideration by 31 U.S.C. § 3702(b). Any entitlement for later periods would be contingent on reversal of determinations of noneligibility the Army made more than 6 years prior to receipt of the claim, and GAO declines to review such determinations.

B-257724, March 24, 1995

Civilian Personnel

Relocation

- Residence transaction expenses
- ■ Reimbursement
- ■ ■ Eligibility
- ■ ■ ■ Permanent duty stations

An employee whose permanent duty station was in New York City was assigned to temporary duty in Washington, DC. He commuted to his temporary duty station from his family residence in Reston, Virginia. While still on temporary duty, he was transferred to a new permanent duty station in Dallas, Texas. Since Washington, DC, was the employee's temporary duty station at the time of his transfer to Dallas, he does not qualify for reimbursement of real estate sales expenses for the Reston residence upon his transfer to 5 U.S.C. § 5724a(a)(4).

B-259910, March 24, 1995

Civilian Personnel

Relocation

- Expenses
- ■ Reimbursement
- ■ ■ Eligibility
- ■ ■ ■ Personal convenience

Civilian Personnel

Relocation

- Miscellaneous expenses
- ■ Reimbursement
- ■ ■ Eligibility

An employee applied for and was appointed to a position through his agency's merit promotion program, the vacancy announcement for which expressly stated that no relocation benefits would be provided. However, an announcement made available to non-federal applicants did not include that statement, from which the employee infers that relocation benefits would have been provided to an appointee, and therefore he should be entitled to them as well. In view of the agency policy not to provide the benefits in cases of this type, and the inclusion of a statement on the merit vacancy announcement that relocation benefits were not being offered, there is no presumption that the employee's transfer, although incident to a merit promotion program, would include relocation benefits. Also, the lack of such a statement on the announcement available to non-federal applicants raises no presumption for a new appointee to the federal government. Accordingly, the denial of the employee's claim for such benefits is sustained.

B-256945, March 27, 1995

Civilian Personnel

Relocation

- Household goods
- ■ Shipment
- ■ ■ Restrictions
- ■ ■ ■ Privately-owned vehicles

A transferred employee of the Army, who shipped a privately owned vehicle (POV) to his overseas duty station at government expense, replaced that vehicle with a foreign-made vehicle (FPOV) purchased overseas shortly after the original POV had to be scrapped. He seeks reimbursement for the cost of shipping the FPOV back to the United States on his return transfer. The claim is denied. An FPOV may not be shipped at government expense unless it qualifies under an exception stated in 2 JTR C11003-2c and paragraph 12-26b(3) of Army Regulation 55-71, which grants major Army commanders overseas discretionary authority to approve shipments. The record shows that the employee's request for shipment was specifically disapproved.

Military Personnel

B-258294, March 16, 1995

Military Personnel

Travel

- Travel expenses
- ■ Temporary duty
- ■ ■ Vouchers
- ■ ■ ■ Fraud

A Reserve officer performing temporary duty submitted a travel voucher claiming taxi fares which were inflated over the actual fare charged in the area, in an effort to "construct" the cost of a rental car which he used but had not been authorized. The claims for both the cab and rental car costs are denied because the claim for taxi fares not actually incurred tainted any other transportation allowances claimed for the days on which the cab fares were claimed.

B-258764, March 17, 1995

Military Personnel

Pay

- Survivor benefits
- ■ Annuities
- ■ ■ Eligibility
- ■ ■ ■ Illegitimate children

An illegitimate child who was a recognized as a natural child of the member and lived with the member in a regular parent-child relationship for a period of time during the member's life is entitled to a Survivor Benefit Plan annuity.

B-260444, March 22, 1995

Military Personnel

Pay

- Survivor benefits
- ■ Eligibility

A retired member elected Survivor Benefit Plan (SBP) coverage for his wife during an open season. The law which provided for the open season required that the member survive for 2 years after the effective date of the election. Since the member died before the end of the 2 years, the widow's claim for an SBP annuity is denied.

B-258488, March 30, 1995
Military Personnel

Pay

- Overpayments
- ■ Error detection
- ■ ■ Debt collection
- ■ ■ ■ Waiver

A member was erroneously paid a dislocation allowance (DLA) and overseas housing allowance (OHA) when she moved into private quarters. Payment of OHA continued for 6 weeks after the member v notified that she was not entitled to OHA. When she was notified, she moved back into governm quarters, but exhausted the 6 weeks of erroneous payments covering the costs of vacating the priv quarters prior to the expiration of the lease. Waiver under 10 U.S.C. § 2774 is appropriate for the D and OHA amounts she received including OHA paid after her notification because the requireme for waiver are met.

The member was notified that she was not entitled to OHA and was required to move back into government quarters. However, she had already vacated the private quarters and the lease term had expired. The member was not notified of the requirement to move back into government quarters until after the lease had expired. The member was not notified of the requirement to move back into government quarters until after the lease had expired.

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Procurement

B-257822.4, March 1, 1995

Procurement

Socio-Economic Policies

- Preferred products/services
- ■ Domestic sources
- ■ ■ Foreign products
- ■ ■ ■ Price differentials

95-1 CPD ¶ 167

REDACTED VERSION

Under solicitation for pavement testing equipment and certain other services where the protester offered the product of a nonqualifying country, the agency improperly included the costs for those services to be performed after delivery of the protester's foreign-made equipment in calculating the Buy American Act surcharge applicable to the foreign end product.

B-258911.2, March 1, 1995

Procurement

Competitive Negotiation

- Discussion reopening
- ■ Propriety

95-1 CPD ¶ 168

REDACTED VERSION

Protest that procuring agency improperly reopened negotiations is denied where it was not clear from the solicitation: (1) whether offerors were to propose costs for two tasks on a per year basis or a cumulative basis for the entire 5-year contract period, and (2) that a stated number of required trips in the solicitation applied to certain tasks only and that offerors were required to propose that specific number of trips for those tasks.

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ 10-day rule

Where protest that contracting officer failed to follow applicable regulations in addressing a mistake in protester's offer is not filed within 10 working days after the contracting officer's allegedly improper action, protest is dismissed as untimely.

Procurement

Competitive Negotiation

- Offers
- ■ Clerical errors
- ■ ■ Error correction
- ■ ■ ■ Propriety

Protest that contracting officer improperly failed to permit protester to correct a mistake in its offer is denied where, because the mistake was not apparent from the face of the offer, in order to permit protester to correct the mistake, the contracting officer would have had to reopen negotiations; it was clearly not in the government's best interest to do so.

B-259027, March 1, 1995

95-1 CPD ¶ 1

Procurement

Competitive Negotiation

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Technical superiority

Procurement

Socio-Economic Policies

- Small businesses
- ■ Competency certification
- ■ ■ Applicability

Protest that agency improperly rejected proposal based upon a pass/fail evaluation under a traditional responsibility factor without referral to the Small Business Administration is denied where the agency reevaluated and upgraded the protester's proposal to acceptable in response to the protest, but nonetheless concluded that the awardee's higher-priced, higher-rated proposal offered greater value to the government.

Procurement

Competitive Negotiation

- Offers
- ■ Clerical errors
- ■ ■ Error correction
- ■ ■ ■ Propriety

Contention that agency wrongly permitted awardee to correct its proposal price is denied where the agency followed the regulatory requirements for permitting such corrections.

B-259034, March 1, 1995

95-1 CPD ¶ 119

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ 10-day rule

Protest (filed after protester's proposal was eliminated from the competitive range) challenging an agency's failure to obtain a Delegation of Procurement Authority (DPA) from the General Services Administration pursuant to the Brooks Act, 40 U.S.C. § 759 (1988), is dismissed as untimely where the protested solicitation failed to include a clause prescribed by the Federal Information Resources Management Regulations advising that a DPA had been obtained, from which the protester knew or should have known before initial proposals were due that no DPA had been obtained.

B-259066, March 1, 1995

95-1 CPD ¶ 120

Procurement

Noncompetitive Negotiation

- Contract awards
- ■ Sole sources
- ■ ■ Propriety

Under solicitation for flight critical helicopter parts which restricted award to approved sources, the agency properly awarded the contract to the only approved source where the protester failed to seek source approval prior to the procurement and repeatedly failed to submit sufficient qualification information to support a pending source approval application.

B-259076, March 2, 1995

95-1 CPD ¶ 124

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Price data
- ■ ■ ■ Information sufficiency

Bidder's submission of prices for work to be deleted rather than prices for the work remaining after the deletion was responsive to solicitation requirement that bidders furnish prices for all line items and the bidder's prices for the remaining work are readily ascertainable from the face of its bid documents. Bid entry of prices for the work to be deleted is a waivable minor informality which did not prejudice the other bidders.

Procurement**Competitive Negotiation**

- Discussion reopening
- ■ Propriety

The General Accounting Office (GAO) will not object to corrective action taken by the agency in response to a GAO decision sustaining a protest and recommending the reopening of discussions where the agency restricts the scope of revisions that offerors may make to their proposals; response to the discussions; such action will remedy the procurement impropriety upon which prior protest was sustained; and will do so without raising the possibility of technical leveling unduly delaying the source selection process.

Procurement**Competitive Negotiation**

- Technical evaluation boards
- ■ Information adequacy
- ■ ■ Allegation substantiation

Protest that source selection official for architect-engineer services failed to follow applicable source selection procedures is denied where the alleged violation—that after he determined that the source selection report was inadequate, he requested the evaluation board to withdraw it and explained or the revisions he expected rather than rejecting the report outright and providing his reasons for doing so in writing—are deficiencies of form which do not effect the validity of the selection decision.

Procurement**Bid Protests**

- Allegation substantiation
- ■ Lacking GAO review

Protest that agency improperly determined that protester and awardee are equally qualified to perform architect-engineer contract is denied where the protester has only demonstrated his disagreement with the agency's conclusions and has not shown that those conclusions are unreasonable.

Procurement**Special Procurement Methods/Categories**

- Architect/engineering services
- ■ Offers
- ■ ■ Evaluation criteria
- ■ ■ ■ Application

Procuring agency improperly used a factor that was not provided for in the solicitation—equitable distribution of work—to resolve a tie between offerors on an architect-engineer competitive negotiation. Nevertheless, since the factor was applied equally to all offerors that were being considered for the negotiations, and since it is implausible to believe that protester would not have competed if it had been known that equitable distribution of work was to be used, but only to break a tie, the protest is denied because the protester was not prejudiced.

Procurement

Special Procurement Methods/Categories

- Architect/engineering services
- Contract awards
- Administrative discretion

In determining the dollar volume of contract awards to be attributed to offeror for purposes of determining equitable distribution of architect-engineer (A-E) work, procuring agency reasonably considered only A-E contracts that had been awarded by the Department of Defense (DOD) to the offering entities, rather than all DOD contracts of any kind that had been awarded to all firms on which the offering entities relied to demonstrate their capability to perform the contract.

B-259091, March 3, 1995

95-1 CPD ¶ 127

Procurement

Sealed Bidding

- Bids
- Responsiveness
- Ambiguous prices

Agency properly rejected bid containing inconsistent prices where the bid was not low under all reasonable interpretations.

B-257261.2, March 6, 1995

95-1 CPD ¶ 128

Procurement

Socio-Economic Policies

- Small business set-asides
- Cancellation
- Justification

Agency properly canceled a small business set-aside where there was no reasonable expectation of obtaining bids from at least two small businesses offering products of different small businesses.

B-257547.5, et al., March 6, 1995

95-1 CPD ¶ 129

Procurement

Bid Protests

- GAO procedures
- GAO decisions
- Reconsideration

Requests for reconsideration are denied where requesters raise untimely challenges to the conduct of the procurement; raise arguments that could have been raised during the course of the protest, but were not; and fail to show that the prior decision contained any errors of fact or law.

B-259083, March 6, 1995

95-1 CPD ¶ 1

Procurement

Sealed Bidding

- Invitations for bids
- ■ Competition rights
- ■ ■ Contractors
- ■ ■ ■ Exclusion

Procurement

Sealed Bidding

- Invitations for bids
- ■ Advertising

Agency did not use reasonable methods to obtain full and open competition where it improperly classified the announcement of a beverage vending services procurement published in the Commerce Business Daily, in that the classification category selected was for leasing or renting equipment, while the procurement did not contemplate.

B-259165, March 6, 1995

95-1 CPD ¶ 1

Procurement

Sealed Bidding

- Invitations for bids
- ■ Post-bid opening cancellation
- ■ ■ Justification
- ■ ■ ■ Funding restrictions

Agency properly canceled solicitation after bid opening where it determined that sufficient funds were no longer available to make an award.

B-259166; B-260333, March 6, 1995

95-1 CPD ¶ 1

Procurement

Sealed Bidding

- Invitations for bids
- ■ Post-bid opening cancellation
- ■ ■ Justification
- ■ ■ ■ Sufficiency

Procurement

Sealed Bidding

- Invitations for bids
- ■ Terms
- ■ ■ Defects

Cancellation of solicitation, as materially defective, after bid opening, was proper where terms in the solicitation regarding the applicability of state sales taxes and requirement for inclusion of such tax in bidders' prices were in conflict.

B-259175, March 6, 1995

95-1 CPD ¶ 132

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Bid guarantees

Where a solicitation provided that the only acceptable form of bid guarantee was a cashier's check, the agency properly rejected a bid that furnished a bid bond, but not a cashier's check, as the bid guarantee.

B-259700, March 6, 1995

95-1 CPD ¶ 133

Procurement

Competitive Negotiation

- Offers
- ■ Competitive ranges
- ■ ■ Exclusion
- ■ ■ ■ Administrative discretion

Contracting agency reasonably excluded protester's proposal from the competitive range where the proposal offered no technical advantage over the remaining proposals, its price, which was fifth low, exceeded the low offeror's by 36 percent and the second-low offeror's by 31 percent, and there was no reasonable possibility that a significant price reduction would be achieved if discussions were held.

B-259776.2, March 6, 1995

95-1 CPD ¶ 134

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

A request for an extension of bid opening or date set for receipt of proposals alone does not represent a protest where the nature of the request does not imply a violation of law or regulation.

B-257858, March 7, 1995

Procurement

Payment/Discharge

- Shipment
- ■ Carrier liability
- ■ ■ Amount determination

Liability for damage to unaccompanied baggage is based on the gross weight of the large shipping containers in which it is packed unless the shipment is packed in cartons inside the shipping containers and accompanied by a complete household goods descriptive inventory.

B-258336; B-258342, March 7, 1995

Procurement

Payment/Discharge

- Shipment costs
- ■ Additional costs
- ■ ■ Burden of proof

In the absence of other supporting evidence, the Department of Defense may pay a carrier's claim : an additional charge for providing an accessorial or special service lacking the required bill of lading annotation from the shipper requesting the service, when the administrative agency confirms that the shipper, in fact, requested and received the service and nothing in the contract prohibits payment.

B-259117, March 7, 1995

95-1 CPD ¶ 14

Procurement

Socio-Economic Policies

- Small businesses
- ■ Responsibility
- ■ ■ Competency certification
- ■ ■ ■ Negative determination

Where Small Business Administration (SBA) declined to issue certificate of competency (COC) following agency's referral of nonresponsibility determination, and protester thereafter presented nonresponsibility information to agency, there was no requirement that matter be referred back to SBA for further COC review.

Procurement

Socio-Economic Policies

- Small businesses
- ■ Responsibility
- ■ ■ Competency certification
- ■ ■ ■ Negative determination

Agency reasonably declined to reverse nonresponsibility determination based on new information presented after Small Business Administration declined to issue certificate of competency, where contracting officer reasonably concluded that new information did not eliminate concerns regarding financial capacity.

B-257271.3, et. al. March 8, 1995

95-1 CPD ¶ 135

Procurement

Competitive Negotiation

- Offers
- ■ Competitive ranges
- ■ ■ Exclusive
- ■ ■ ■ Administrative discretion

Agency determination to exclude protester's proposal from the competitive range was unobjectionable where the agency concluded, on the basis of an evaluation which was reasonable and consistent with the solicitation evaluation criteria and in light of the receipt of several superior proposals and the extent of the changes necessary to correct deficiencies in protester's proposal, that the proposal had no reasonable chance of being selected for award.

B-259112; B-259113, March 8, 1995

95-1 CPD ¶ 141

Procurement

Small Purchase Method

- Requests for quotations
- ■ Competition rights
- ■ ■ Contractors
- ■ ■ ■ Exclusion

Procurement

Small Purchase Method

- Requests for quotations
- ■ Competition rights
- ■ ■ Contractors
- ■ ■ ■ Notification

Protest is sustained where contracting office furnished request for quotations (RFQ) for furniture system to only 2 of the 13 Federal Supply Schedule (FSS) contractors for which it had brochures on hand, since the applicable FSS calls for the purchasing office to furnish copies of the RFQ to all contractors for whom brochures are on hand, and Federal Acquisition Regulation § 8.405-1(a), in effect at the time the procurement was conducted, directed agencies ordering from FSS contracts to review the schedule price lists that were reasonably available at the ordering office.

Procurement

Specifications

- Minimum needs standards
- ■ Competitive restrictions
- ■ ■ Allegation substantiation
- ■ ■ ■ Evidence sufficiency

Procurement

Specifications

- Minimum needs standards
- ■ Competitive restrictions
- ■ ■ Brand name specifications

Request for quotations for furniture system, which listed part numbers and dimensions for a manufacturer's product line, was unduly restrictive of competition since it requested quotations on brand name or equal basis, but did not otherwise describe required characteristics of the furniture system sought.

B-258431.2, March 13, 1995

95-1 CPD ¶ 1

Procurement

Competitive Negotiation

- Contract awards
- ■ Fixed-price contracts
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Justification

In a procurement for the award of a fixed-price contract for computer workstations to the technically acceptable, lowest-priced offeror, where the solicitation required that offerors provide sufficient information to demonstrate compliance with detailed technical specifications, the contracting agency reasonably accepted the awardee's offer of an interface device which the agency recognized could meet its solicitation requirements.

Procurement

Competitive Negotiation

- Technical transfusion/leveling
- ■ Allegation substantiation
- ■ ■ Evidence sufficiency

The contracting agency did not engage in technical leveling where successive rounds of discussion were required for both the awardee's and the protester's proposals before they were found technically acceptable and the discussions conducted with the awardee were not due to the awardee's lack of diligence, competence, or inventiveness.

Procurement

Bid Protests

- Allegation investigation
- ■ GAO review

Procurement

Competitive Negotiation

- Offers
- ■ Price omission
- ■ ■ Line items
- ■ ■ ■ Allegation substantiation

Protest that the awardee's price for a contract line item for an upgraded computer workstation may only have been for the upgrades, while the protester priced the line item as a stand-alone workstation is denied where the solicitation unambiguously required pricing of a stand-alone unit, the awardee's pricing is consistent with providing a stand-alone unit, and the agency was assured during discussions that offerors knew that prices for this line item were for a stand-alone unit.

Procurement

Competitive Negotiation

- Offers
- ■ Risks
- ■ ■ Evaluation
- ■ ■ ■ Technical acceptability

Protest that the contracting agency unreasonably failed to assess the technical risk in the awardee's offer of allegedly unreasonably low prices is dismissed where the solicitation contemplated the award of a fixed-price contract and there were no stated criteria for a cost/price realism analysis or the evaluation of offerors' understanding; the reasonableness of an offeror's low price concerns the offeror's responsibility.

Procurement

Bid Protests

- Allegation substantiation
- ■ Lacking
- ■ ■ GAO review

Protest that the contracting agency in the award of a fixed-price contract did not assure that the awardee would comply with contract cost principles and cost accounting standards is dismissed because there is no requirement that an offeror's proposed fixed prices encompass estimated performance costs.

B-259173, March 13, 1995

**95-1 CPD ¶ 1
REDACTED VERSION**

Procurement

Noncompetitive Negotiation

- Contract awards
- ■ Sole sources
- ■ ■ Propriety

Protest that procuring agency improperly awarded a sole-source contract for advanced design windshields for the F-15 aircraft is denied where the awardee was the only available source for windshields.

B-259034.2, March 14, 1995

95-1 CPD ¶ 1

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Where protester's proposal did not demonstrate an adequate technical understanding of required software support services, an agency is not required during discussions to pinpoint each specific instance in which the protester's proposal exhibited a lack of technical understanding; the agency conducted meaningful discussions by identifying the apparently misunderstood software discipline and directing the protester to the performance areas most likely to be affected.

B-259280, March 14, 1995

95-1 CPD ¶ 14

Procurement

Bid Protests

- Dismissal

Protest alleging improprieties in the specifications for flight-line oil/water separators is dismissed where the protester does not allege that the specifications are unduly restrictive of competition, but instead claims that the specifications will not result in the best possible system for the agency; fail to ensure agency compliance with other environmental regulations; and fail to adopt recent technological advances in the field of oil/water separation.

B-259201, March 15, 1995

95-1 CPD ¶ 14

Procurement

Bid Protests

- Allegation substantiation
- ■ Lacking
- ■ ■ GAO review

Communication between a bidder and contracting agency personnel concerning historical bid price was not a violation of either the Certificate of Independent Price Determination or the procurement integrity provisions of the Office of Federal Procurement Policy Act, 41 U.S.C. § 423 (1988 and Supp. V 1993).

Procurement

Contractor Qualification

- Contractor personnel
- Misrepresentation

Procurement

Contractor Qualification

- Organizational conflicts of interest
- Determination

A bidder's representation in its Organizational Conflicts of Interest Certification that it has no conflicts, when in fact it did, does not render the bidder ineligible for award where the misrepresentation was neither wilful nor made in bad faith, and did not materially influence the agency's award determination.

B-259228, March 15, 1995

95-1 CPD ¶ 145

Procurement

Bid Protests

- Allegation substantiation
- Burden of proof

Protest that incumbent contractors currently involved in administering Department of Defense fellowship programs were unfairly permitted to apply unused funds to lower their proposed costs is denied where there is no evidence in the record that agency officials gave any such permission, and the source for the protester's allegation states that the protester misunderstood his comments.

B-259225, March 16, 1995 ***

95-1 CPD ¶ 146

Procurement

Socio-Economic Policies

- Small business set-asides
- Disadvantaged businesses
- Administrative discretion

Army reasonably determined to set aside procurement for road repair for exclusive small disadvantaged business (SDB) participation where, after consulting with the agency's Small Business Advisor and being advised that there was considerable responsible SDB interest in the procurement, the contracting officer reasonably determined that it would receive bids from at least two responsible SDBs and award could be made at a price within 10 percent of fair market value.

B-259326, March 16, 1995

95-1 CPD ¶ 1

Procurement

Sealed Bidding

- Competitive advantage
- ■ Incumbent contractors

Protest that the terms of an invitation for bids provide an improper competitive advantage to incumbent which had been improperly awarded the predecessor contract is denied where incumbent did not obtain any information under that contract which provided an inappropriate competitive advantage, nor acted improperly in order to obtain the contract.

B-259222; et al., March 17, 1995

95-1 CPD ¶ 1

Procurement

REDACTED VERSION

Competitive Negotiation

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Technical superiority

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Adjectival ratings

Contracting officer's cost/technical tradeoff decisions resulting in awards to higher technically rated (based on adjectival ratings), significantly higher evaluated cost offerors are unreasonable where contracting officer mechanically applied the solicitations' evaluation methodology and the purported reasons for his decisions are not supported by the contemporaneous evaluation and source selection documentation.

B-257863.3, March 20, 1995

95-1 CPD ¶ 1

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where the requesting party does not show that our prior decision contains either errors of fact or law or present information not previously considered that warrants reversal or modification of our decision.

B-258018.3, March 20, 1995 ***

95-1 CPD ¶ 148

Procurement

Contract Management

■ Contract administration

■ ■ Options

■ ■ ■ Use

■ ■ ■ ■ GAO review

A decision not to exercise an option based on responsibility-type concerns does not require referral to the Small Business Administration where the contractor is a small business since such decision does not involve a responsibility determination; the concept of responsibility is applicable only in the contract formation process

B-259252, March 20, 1995

95-1 CPD ¶ 149

Procurement

Competitive Negotiation

■ Offers

■ ■ Evaluation

■ ■ ■ Prior contract performance

Where solicitation provided that agency would evaluate offerors' past performance based on evidence of successful performance of contracts similar in nature in terms of four complexity factors—waste quantities, variety of pickup locations and waste streams, and disposal time frames—agency reasonably determined that proposal from offeror who had successfully performed contract involving all four complexity factors was a better value, despite its higher cost, than was the proposal from the protester, who had no record of performing a contract involving all four complexity factors.

Procurement

Competitive Negotiation

■ Discussion

■ ■ Determination criteria

Agency was not required to hold discussions regarding complexity of contracts listed in protester's technical proposal, since agencies are not required to point out elements of proposals that receive less than full evaluation credit where, as here, the protester's past performance was essentially satisfactory and its proposal was found acceptable.

B-259282, March 20, 1995

95-1 CPD ¶

Procurement

Contractor Qualification

- Approved sources
- ■ Qualification
- ■ ■ Delays

Protest that agency deprived protester of an opportunity to compete by unreasonably delaying approval of protester as a source for a source controlled part is denied where the record does not show evidence any unreasonable delay on the part of the agency.

B-259291, March 20, 1995

95-1 CPD ¶

Procurement

Bid Protests

- GAO procedures
- ■ Interested parties
- ■ ■ Direct interest standards

Protester is not an interested party to assert that the contracting agency improperly evaluated award of "equal" product in a brand name or equal procurement where the protester would not be in line for award even if the allegations were correct.

B-259375, March 20, 1995

95-1 CPD ¶

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Downgrading
- ■ ■ ■ Propriety

An agency properly downgraded the protester's proposal for presenting an inadequate emergency staffing approach, where the protester merely identified employees who resided near the contract location.

Procurement

Competitive Negotiation

- Offers
- ■ Organizational experience
- ■ ■ Evaluation
- ■ ■ ■ Evidence sufficiency

An agency properly downgraded the protester's proposal for presenting insufficient evidence of corporate experience, where the protester apparently relied upon the qualifications of its proposal personnel to establish its corporate experience, but the solicitation provided for a separate evaluation of corporate and personnel experience.

B-259552, March 20, 1995

95-1 CPD ¶ 153

Procurement

Competitive Negotiation

- Hand-carried offers
- ■ Late submission
- ■ ■ Acceptance criteria

Protest against rejection of a hand-carried proposal received after the time set for receipt of proposals is denied where the late delivery was not caused by improper

B-259283, March 22, 1995

95-1 CPD ¶ 158

Procurement

Competitive Negotiation

- Offers
- ■ Designs
- ■ ■ Evaluation
- ■ ■ ■ Technical acceptability

Protest that low bidders' equipment shelters were noncompliant with solicitation's stated requirements is denied where solicitation permitted bids for equipment shelters other than those specified.

B-259879, March 22, 1995

Procurement

Payment/Discharge

- Shipment costs
- ■ Payment time periods
- ■ ■ Statutes of limitation

A carrier's claim for additional charges is untimely under 31 U.S.C. § 3726 when, on appeal to this Office more than 3 years after the original payment, the carrier revises its claim, proposing that it should have applied a different tariff in lieu of the tariff it applied in its claim with the Administrator of General Services. The Administrator correctly denied the claim as originally filed by the carrier. This Office will not consider the revised claim because it is untimely.

B-258266.3, March 23, 1995

95-1 CPD ¶ 159

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where protester fails to establish that its earlier protest was timely and where protester raises arguments for the first time which should have been raised in protest.

B-258667.2, March 23, 1995

Procurement

REDACTED VERSI

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Compliance

Protest that awardee's proposal qualified its offer to provide hardware required to make its pro compliant by designating the hardware as optional is denied where protester's interpretation o proposal's language is unreasonable when read in context.

B-259080.2, March 23, 1995

95-1 CPD ¶ 1

Procurement

Sealed Bidding

- Low bids
- ■ Error correction
- ■ ■ Price adjustments
- ■ ■ ■ Propriety

Agency properly allowed correction of mistake in apparent low bid where the record clearly sh the existence of the mistake and of the intended bid, and the corrected bid remains below the low bid.

B-259350, March 23, 1995

95-1 CPD ¶ 1

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Certification
- ■ ■ ■ Signatures

Bid was properly rejected as nonresponsive where its certificate of procurement integrity identi one person as the certifier but was signed by a different person; the improperly executed certifi failed to unequivocally bind the bidder to perform in accordance with the substantial legal obligati imposed by the certificate.

B-259351, March 23, 1995
Procurement

95-1 CPD ¶ 162

Competitive Negotiation

- Requests for proposals
- ■ Cancellation
- ■ ■ Justification
- ■ ■ ■ Cost savings

Protest that the contracting officer improperly canceled a request for proposals is denied where the contracting officer reasonably determined that the requested services were not needed because they would duplicate services already being provided by various universities and other organizations under a grant program sponsored by the agency.

B-259402; B-259402.2, March 24, 1995
Procurement

95-1 CPD ¶ 163

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Agency did not conduct meaningful and equal discussions where it failed to advise the protester during discussions of the noted weakness in the protester's proposal but advised two other offerors of the same weakness in their proposals.

B-259549, March 24, 1995 ***
Procurement

95-1 CPD ¶ 164

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Foreign currencies

The United States (U.S.) Embassy in Thailand properly determined that the requirement that offers and payment be made in Thai baht in a solicitation for local guard services is not a barrier to competition by U.S. firms as precluded and defined under section 141 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, Pub. L. 103-236, 108 stat. 382 (to be codified at 22 U.S.C. § 4864).

B-259364, March 27, 1995

95-1 CPD ¶ 1

Procurement

Sealed Bidding

- Invitations for bids
- ■ Amendments
- ■ ■ Acknowledgment
- ■ ■ ■ Responsiveness

Agency properly rejected bid as nonresponsive where the bidder failed to acknowledge a material amendment which imposed an obligation on the contractor not contained in the original solicitation; absent acknowledgment of the amendment, the bidder would not be required to furnish the service in accordance with the amended solicitation requirements.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Competition rights
- ■ ■ Contractors
- ■ ■ ■ Exclusion

Agency's failure to send bidder a copy of a material amendment was not improper where the protest was not on the solicitation mailing list, and the record neither supports the protester's allegation that the agency sent the firm the original solicitation nor indicates deficiencies in the contracting agency solicitation process.

B-258836.4, et al., March 28, 1995

95-1 CPD ¶ 18

Procurement

Bid Protests

- GAO procedures
- ■ Reconsideration

Request for reconsideration is denied where the protester does not show that the decision was erroneous or present new evidence that would warrant reversal of previous dismissal.

B-259470, March 28, 1995

95-1 CPD ¶ 16

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Evaluation criteria
- ■ ■ ■ Application

Protester's contention that agency improperly evaluated its proposal is denied where the record shows that the agency evaluated protester's proposal in accordance with the evaluation criteria announced in the solicitation, and reasonably supports the protester's lower technical rating.

Procurement

Competitive Negotiation

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Technical superiority

Award to offeror submitting a higher-rated, higher-cost proposal is unobjectionable where the evaluation scheme announced in the solicitation gave more weight to the technical area than to cost, and the agency reasonably found that awardee's superior technical proposal was worth the slightly higher cost.

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ Apparent solicitation improprieties

Contention that solicitation's "backup" staffing requirement was unduly restrictive of competition because the requirement was burdensome on small businesses, and objection to the agency's decision to conduct the procurement using "one-step" streamlined procedures, are untimely where solicitation clearly advised offerors that agency would consider "backup" technical support staff in evaluating proposals, and would be conducting the procurement using streamlined procedures, and protester did not raise these allegations until well after the time set for receipt of initial proposals.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Cost realism
- ■ ■ ■ Rates

In developing protester's evaluated cost, contracting agency reasonably relied on direct and indirect rates recommended for the protester by the Defense Contract Audit Agency (DCAA), since DCAA based its recommendations on rates associated only with personnel protester proposed that were found acceptable by the contracting agency and based on the protester's current accounting practices.

Procurement**Competitive Negotiation**

- Requests for proposals
- ■ Terms
- ■ ■ Ambiguity allegation
- ■ ■ ■ Interpretation

Procurement**Specifications**

- Ambiguity allegation
- ■ Specification interpretation

Protest alleging that solicitation contained latent ambiguities or that it did not include sufficient information to enable offerors to compete on an equal basis is denied where protester primarily alleges that the awardee cannot be intending to perform in the same manner as the protester-based awardee's significantly lower price— but does not provide any evidence that the two approaches differ in any material way.

Procurement**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reversal
- ■ ■ ■ Additional information

Procurement**Bid Protests**

- Information disclosure
- ■ Competitive advantage

Protester's claim that one offeror was unfairly permitted to withhold more of its technical proposal from release than other offerors, and that protester provided a redacted version of its technical proposal under economic duress—in response to the agency's effort to ameliorate a competitive advantage given to one offeror in a reopened competition by the agency's release of certain portions of the technical proposals of the awardees in the earlier competition—is denied where the record shows that the protester's release of its technical proposal was voluntary, and the other offeror responded to the agency's request for further justifications until the agency was convinced that proposed redactions were appropriate.

Procurement

Contractor Qualification

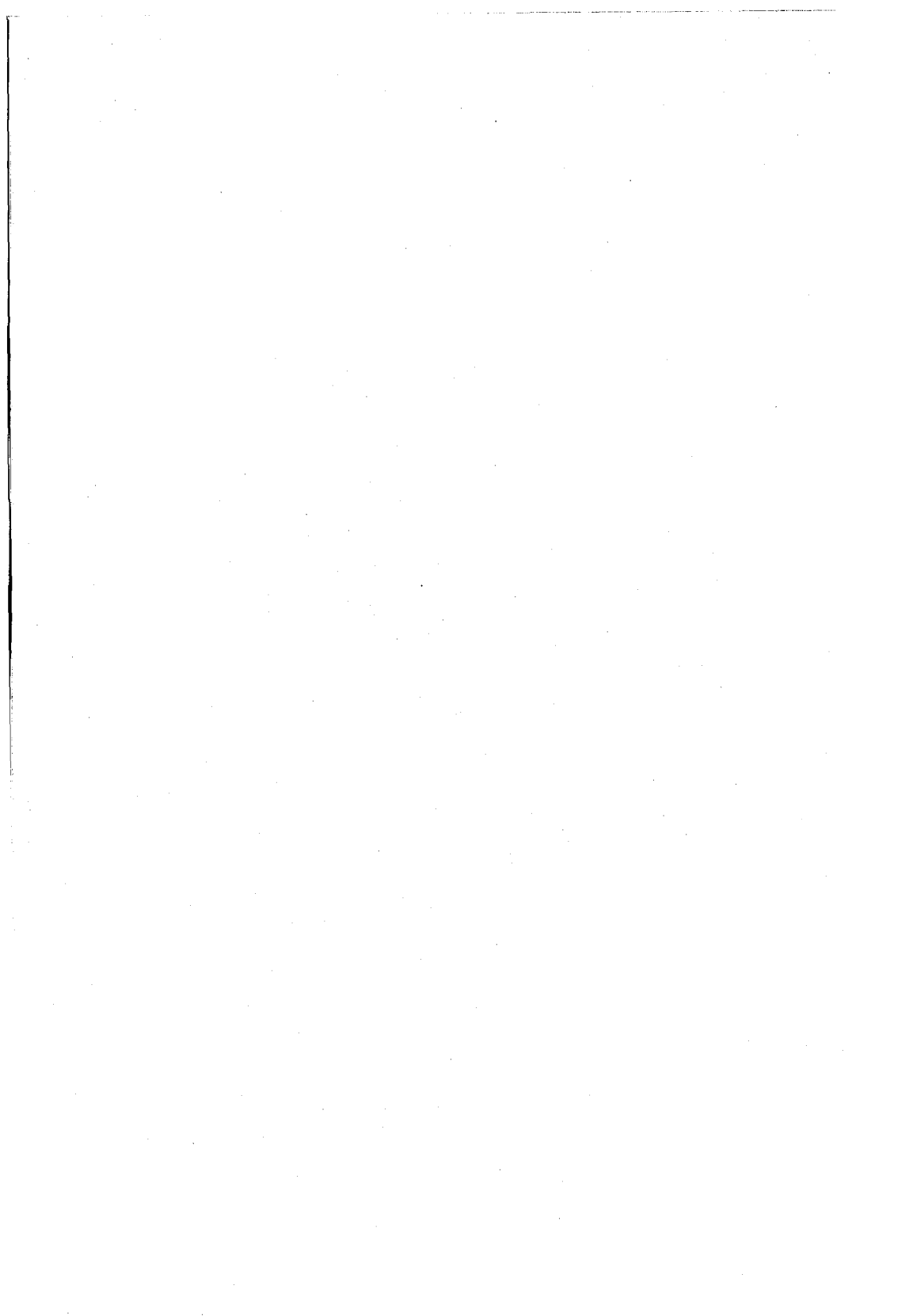
- Responsibility
- ■ Contracting officer findings
- ■ ■ Negative determination
- ■ ■ ■ Criteria

Procurement

Contractor Qualification

- Responsibility
- ■ Contracting officer findings
- ■ ■ Negative determination
- ■ ■ ■ GAO review

Protest against nonresponsibility determination for low bidder is sustained where determination that the protester did not have the production capability to perform the contract is based on a conclusion by agency which lacks any reasonable basis.





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